

1 Plaintiffs;

2 e. engaging in conduct that undermines or violates the spirit or intent of the consumer  
3 protection laws alleged in this Complaint; and

4 f. omitting to inform Plaintiffs that they could be rejected from the trial modification  
5 period at any point, and that this would result in the immediate demand for a balloon  
6 payment consisting of purported delinquency payments and substantial late fees,  
7 default fees, foreclosure fees, inspection fees, property preservation fees, trustee fees,  
8 trustee sale guarantee fees, mail fees, recording fees, and default servicing fees

9 311. Counts 14 through 22 arise under this (Fourth) Cause of Action for Deception in Loan  
10 Modifications, and are brought by all Plaintiffs named in this Cause of Action, against all Defendants  
11 named in this Cause of Action.

12  
13 **COUNT 14 : VIOLATION OF CAL. CODE CIV. PROC. § 580B AND §726 PROHIBITING**  
14 **COLLECTION OF DEBT AFTER ELECTING TO FORECLOSE**

15 312. The preceding paragraphs and the paragraphs following this cause of action are  
16 incorporated by reference as though fully set forth herein.

17 313. As described above, California law forbids deficiency judgments in non-judicial  
18 foreclosure of residential mortgages. *See* Cal. Code Civ. Proc. § 580b. Once a lender invokes its power  
19 to sell the underlying security for a mortgage (through providing its “Notice of Default and Election to  
20 Sell”), it cannot also seek to collect on the underlying note any amount owed in excess of the amount it  
21 recovers through the trustee’s sale.

22 314. As alleged throughout this Cause of Action, Bank Defendants have entered into Workout  
23 Agreements with Plaintiffs after initiating foreclosures on their properties, under which it has  
24 intentionally extracted thousands of dollars of payments from each of the Plaintiffs named herein in  
25 explicit and *knowing* violation of Cal. Code Civ. Proc §580(b) and §726 prohibiting the collection of  
26 payments on the note after the election to foreclose.

27 315. Bank Defendants’ acts comprise a scheme to circumvent the statutory bar against seeking  
28 a deficiency judgment. These acts were taken in furtherance of the conspiracy among all Defendants

1 alleged throughout this Complaint.

2 316. Such unlawfully extracted payments constitute damage to Plaintiffs herein. These  
3 payments must be returned to Plaintiffs, plus pre-judgment interest. Further, Bank Defendants should be  
4 enjoined from continuing to violate this rule in the future.

5 **COUNT 15 : FRAUDULENT CONCEALMENT**

6 317. The preceding paragraphs and the paragraphs following this cause of action are  
7 incorporated by reference as though fully set forth herein

8 318. Plaintiffs and Bank Defendants were parties to the Loan Workout Agreements described  
9 above in this Cause of Action

10 319. By intentionally failing to disclose the material information described above in this Cause  
11 of Action, Aurora fraudulently induced Plaintiffs to enter into such Workout Agreements. To reiterate,  
12 *in part* here, Bank Defendants intentionally concealed the materials facts:

13 a. that the true purpose of such Loan Workout Agreements were to extract additional  
14 payments from Plaintiffs, and

15 b. that Plaintiffs would not be modified despite their exact compliance with the terms of the  
16 agreement

17 c. that such payments would not be applied to their loan balance,

18 320. Bank Defendants were under a duty to disclose this information to Plaintiffs

19 321. By intentionally failing to disclose such information Bank Defendants intended to induce  
20 Plaintiffs reliance to enter in the illusory Workout Agreements, and to induce their payments made  
21 thereunder

22 322. Plaintiffs under this Cause of Action did rely on Bank Defendants' failure to disclose  
23 such information in deciding to enter into the Workout Agreements and Extended Workout Agreements

24 323. If Plaintiffs had known the truth, they would not have entered into the Workout  
25 Agreements and Extended Workout Agreements

26 324. As a result, Plaintiffs were damaged in amount to be determined at trial. At minimum  
27 Plaintiffs must be returned all amounts paid by Plaintiffs under the Workout Agreements, as well as pre-  
28 judgment interest. Plaintiffs have also been damaged in the form of reduced credit scores, and the

1 unavailability of financing.

2 325. Plaintiffs are further entitled to an award of punitive damages for Defendants intentional  
3 fraudulent conduct.

4 **COUNT 16 : INTENTIONAL MISREPRESENTATION**

5 326. The preceding paragraphs and the paragraphs following this cause of action are  
6 incorporated by reference as though fully set forth herein

7 327. Plaintiffs and Bank Defendants were parties to the Loan Workout Agreements discussed  
8 in this Cause of Action.

9 328. By intentionally misrepresenting the material information described above in this Cause  
10 of Action, Bank Defendants fraudulently induced Plaintiffs to enter into such Workout Agreements. To  
11 reiterate, *in part* here, Bank Defendants intentionally misrepresented the materials facts:

- 12 a. it wanted to help Plaintiffs maintain ownership of their homes. In particular, Bank  
13 Defendants sent the letters and made the statements described herein.
- 14 b. that by complying with the Workout Agreements, Plaintiffs loans would be permanently  
15 modified
- 16 c. that their homes would not be foreclosed as long as Plaintiffs continued to make  
17 payments under the Workout Agreements and Extended Workout Agreements. In  
18 particular, Plaintiffs were repeatedly told to continue to make payments and that their  
19 homes would not be foreclosed, as described herein.
- 20 d. whether they were approved for a loan modification and would have a genuine  
21 opportunity to cure their loan defaults prior to the execution of a Trustee's sale on their  
22 homes. Plaintiffs were never given such an opportunity
- 23 e. that upon the expiration of the Work out Agreements, Plaintiffs would have an  
24 opportunity to cure their defaults through: (1) reinstatement; (2) payoff; (3) HAMP  
25 sponsored Loan Modification; or (4) Investor Sponsored internal modification
- 26 f. that their foreclosures would continue to be on hold after the expiration of the Workout  
27 Agreements if Plaintiffs continued to make payments to Aurora.

28 329. At the time Bank Defendants made these representations to the Plaintiffs, Bank

1 Defendants knew they were not true. Bank Defendants intended to and did foreclose during the time  
2 period for which the Plaintiffs had already made payments under their Extended Workout Agreements.

3 330. Bank Defendants made these representations with the purpose of inducing Plaintiffs  
4 reliance to enter into the Workout Agreements, and Extended workout Agreements, and to continue to  
5 make payments of thousands of dollars per month.

6 331. Plaintiffs relied on these representations in entering the Workout Agreements, and  
7 extended Workout agreements, and in continuing to make payments thereunder.

8 332. Plaintiffs would not have entered into the Workout Agreements and Extended Workout  
9 Agreements had they known that these representations were not true. That is, had they known that they  
10 would not have a genuine opportunity to save their homes and to cure, and that Bank Defendants could  
11 and would foreclose on their properties without any notice that modifications were denied and after they  
12 had paid thousands of dollars to Bank Defendants, Plaintiffs would not have entered into the Workout  
13 Agreements to begin with and would not have made the payments during the terms of the Workout  
14 Agreements and the Extended Workout Agreements.

15 333. As a result, Plaintiffs were damaged in amount to be determined at trial. At minimum  
16 Plaintiffs must be returned all amounts paid by Plaintiffs under the Workout Agreements, as well as pre-  
17 judgment interest. Plaintiffs have also been damaged in the form of reduced credit scores, and the  
18 unavailability of financing.

19 334. Plaintiffs are further entitled to an award of punitive damages for Defendants intentional  
20 fraudulent conduct.

21 **COUNT 17: NEGLIGENT MISREPRESENTATION**

22 335. The preceding paragraphs and the paragraphs following this cause of action are  
23 incorporated by reference as though fully set forth herein

24 336. The allegations of this Count are identical to those above in the previous Count except  
25 that the degree of intent herein is that of negligence. Put another way, at the time Bank Defendants made  
26 the misrepresentations described in this Cause of Action (and listed in part above), Bank Defendants did  
27 not have reasonable grounds to believe them to be true.

1 **COUNT 18: RESCISSION OF CONTRACT AND/OR RESTITUTION ON THE GROUNDS OF**  
2 **FRAUD, AND/OR UNCONSCIONABILITY**

3 337. All preceding paragraphs and the paragraphs following this cause of action are  
4 incorporated by reference as though fully set forth herein

5 338. As described throughout this Cause of Action, consent to the Workout Agreements and  
6 Extended Workout Agreements was not real or free in that it was obtained solely through fraud and  
7 misrepresentations as herein alleged.

8 339. As described throughout this Cause of Action, the Workout Agreements were both  
9 procedurally and substantively unconscionable. Rescission is appropriate for this separate and  
10 independent reason.

11 340. Plaintiffs thus seek to rescind the agreements under California Civil Code § 1689 (b)(1).  
12 Plaintiffs have retained no consideration provided by Bank Defendants that can be tendered back to  
13 Bank Defendants prior to rescission.

14 **COUNT 19: BREACH OF CONTRACT**

15 341. The preceding paragraphs and the paragraphs following this cause of action are  
16 incorporated by reference as though fully set forth herein.

17 342. Plaintiffs and Bank Defendants were parties to the Loan Workout Agreements discussed  
18 in this Cause of Action.

19 343. Plaintiffs furnished consideration under the Loan Workout Agreement in the form of  
20 thousands of dollars of payments

21 344. Bank Defendants breached their obligations to Plaintiffs under Contract as set forth above  
22 in this Cause of action, including but not limited to:

- 23 a. Breaching its obligations to modify plaintiffs upon their compliance with the terms of the  
24 Workout agreement  
25 b. Breaching its obligation to not foreclose while Plaintiffs made payments under the  
26 Workout Agreement  
27 c. Breaching its obligation to allow Plaintiffs an opportunity to cure under the Workout  
28 Agreement

1 345. Separately Bank Defendants has breached the duty of good faith and fair dealing implicit  
2 in all contracts, as alleged above.

3 346. As a result, Plaintiffs have been damaged in an amount to be proven at trial. At minimum  
4 Plaintiffs must be returned all amounts paid by Plaintiffs under the Workout Agreements, as well as pre-  
5 judgment interest.

6 347. Alternatively Plaintiffs request enforcement of the Workout Agreement. Specifically  
7 Plaintiffs request enforcement of the promise of Loan Modification pursuant to the terms and payments  
8 made thereunder, and any other legal or equitable remedies which this Court may deem just and proper.  
9

10 **COUNT 20: VIOLATION OF THE CRIER RULE (CAL. CIV. CODE §2994G)**

11 348. The preceding paragraphs and the paragraphs following this cause of action are  
12 incorporated by reference as though fully set forth herein.

13 349. California law provides that a Trustee's sale can be postponed by mutual agreement. *See*  
14 Cal. Civ. Code § 2994g. However, the new date and time of the postponed sale must be provided by the  
15 trustee (and can be "cried") at the time of the prior scheduled sale. *See* Cal. Civ. Code § 2994g (d).

16 350. Bank Defendants have violated this law by failing to provide the time of the new  
17 postponed sale at the time of the prior scheduled sale.

18 351. In doing so, Defendants have failed to comply with the fundamental notice requirements  
19 of California's non-judicial foreclosure statutes, with which "strict compliance" is required. *Ung v.*  
20 *Koehler* (2005) 37 Cal.App.4<sup>th</sup> 186, 202. Without proper notice, there is no power of sale, and  
21 accordingly the foreclosure sales at issue are void. .  
22

23 **COUNT 21: UNFAIR DEBT COLLECTION PRACTICES (VIOLATION OF CAL. CIV. CODE**  
24 **§1788 ET SEQ)**

25 352. The preceding paragraphs and the paragraphs following this cause of action are  
26 incorporated by reference as though fully set forth herein.

27 353. Bank Defendants, in their capacity as servicers, are "debt collector" engaging in "debt  
28 collection" practices under the Rosenthal Fair Debt Collection Practices Act (the "Rosenthal Act"). *See*

1 Cal. Civ. Code § 1788.2 (c).

2 354. Bank Defendants violated the Rosenthal Act by using false, deceptive, and misleading  
3 statements and deceptive omissions in connection with its collection of Plaintiffs' mortgage debt, as  
4 alleged herein. See Cal. Civ. Code § 1788.17, incorporating 15 U.S.C. § 1692(e). For example (and  
5 without limitation), Plaintiffs were consistently led to believe that modification review was pending  
6 under the Workout Agreements and that the requests for additional documents and receipt thereof would  
7 continue the review process and Workout Agreements. But Bank Defendants unilaterally ceased the  
8 review process and foreclosed on dates previously represented as being postponed.

9 355. The Rosenthal Act was also violated because the Workout Agreements were themselves  
10 deceptive in that they ambiguously appeared to offer an opportunity for borrowers to cure their arrearage  
11 and save their homes from foreclosure *and* stated that the arrearage would not be cured at the end of the  
12 Workout Agreement. The Rosenthal Act allows for a private right of action to the same extent permitted  
13 under the federal Fair Debt Collection Practices Act ("FDCPA"). *See* Cal. Civ. Code § 1788.17;  
14 *Gonzales v. Arrow Financial Services, LLC*, 233 F.R.D. 577, 581 (S.D. Cal. 2006).

15 356. Plaintiffs have suffered damages and harm as a result of Bank Defendants' unfair debt  
16 collection practices, including irreparable harm to their credit and the amounts paid under the Workout  
17 Agreements and Extended Workout Agreements.

18  
19 **COUNT 22: UNLAWFUL, UNFAIR & FRAUDULENT BUSINESS PRACTICES**  
20 **(VIOLATION OF CAL. BUS. & PROF. CODE §17200)**

21 357. The preceding paragraphs and the paragraphs following this cause of action are  
22 incorporated by reference as though fully set forth herein.

23 358. Bank Defendants' acts described in this action are **Unlawful** in that they violate:

- 24 a. The prohibition against collection of deficiency judgments after electing to foreclose  
25 (Cal. Code Civ. Proc. § 580b)  
26 b. The Security First Rule (Cal. Code Civ. Proc. § 726)  
27 c. The Crier rule (Cal. Civ. Code §2994(g)  
28 d. The Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code §1788 et seq)

1 359. Separately, Bank Defendants' acts as described in this Cause of Action are **Fraudulent**  
2 as set forth above.

3 360. Bank Defendants' acts are also patently **Unfair** as more fully set forth above. Without  
4 limiting the allegations above which are fully incorporated herein, Defendants acts are unfair insofar as:

5 a. they unfairly bait Plaintiffs to make thousands of dollars of monthly payments under the  
6 false promise of having their loan modified, when in reality Defendants have no intent of  
7 modifying. These illusory work-out agreements were nothing more than unfair, and  
8 fraudulent cash-grabs

9 b. they used the promise of Loan Modification as bait to damage plaintiffs' credit  
10 preventing them from obtaining financing anywhere else.

11 a. they are designed a subterfuge to the crier rule, and are designed to allow Defendants to  
12 foreclose on Plaintiffs without their knowledge and without giving them notice.

13 361. The Bank Defendants' acts and practices violate established public policy and the harm  
14 they cause to consumers in California greatly outweighs any benefits associated with those practices.

15 362. Bank Defendants' conduct offends public policy and/or is immoral, unethical, oppressive,  
16 unscrupulous, or substantially injurious to consumers. Bank Defendants' conduct in this regard includes,  
17 but is not necessarily limited to, the following:

18 a. Bank Defendants have commonly failed to withdraw foreclosure proceedings against  
19 borrowers who made all Plan Payments under Workout Agreement;

20 b. Bank Defendants have initiated foreclosure proceedings without providing borrowers  
21 notice or opportunity to cure their remaining arrearage or default;

22 c. Bank Defendants have engaged in conduct that constitutes systematic breach of contract  
23 and breach of the implied covenant of good faith and fair dealing.

24 363. Bank Defendants' conduct as set forth herein resulted in loss of money or property to  
25 Plaintiffs, including (1) principal and interest that they were not obligated to pay after Bank Defendants  
26 elected to exercise non-judicial foreclosure and to which Bank Defendants had no ability to collect after  
27 foreclosure; and (2) legal and other fees that Plaintiffs paid to Bank Defendants under the Workout  
28 Agreements and Extended Workout Agreements.



1 364. Defendant's acts caused substantial consumer injury with no benefits to consumer  
2 competition. Plaintiffs could not have reasonably avoided these injuries occasioned by Defendants'  
3 intentional deceit, misrepresentation, and omission. Further, Defendants acts significantly threatened  
4 harm to competition

5 365. Plaintiffs' payments made under the Workout Agreements constitute cognizable  
6 restitution which must be returned to Plaintiffs as well as pre-judgment interest thereon.

7 366. The unfair, unlawful and fraudulent acts and practices of Defendants named herein  
8 present a continuing threat to Plaintiff and to members of the public in that these acts and practices are  
9 ongoing and are harmful and disruptive to business and financial markets. Accordingly, Plaintiffs  
10 request injunctive relief to preclude the actions/wrongs described above by Bank Defendants.

11  
12 **FIFTH CAUSE OF ACTION :**  
13 **INTENTIONAL UNAUTHORIZED FORECLOSURES PURSUED IN THE**  
14 **NAME OF PROFIT**

15 *(By Plaintiffs Norberto Zenteno Flores, Margarita Flores, Sushila Patel, Maria del Carmen Torres,*  
16 *Ana Rosa, Gumersindo Castaneda, Adell Aldrich, Benjamin Avalos, Jr., Eugene Marzette, Ervetta*  
17 *Marzette, Elmer Clarke, Pearlle Clarke, Ferdinand Paragas-Whittier, Josephine Paragas-Whittier,*  
18 *Mihai Schera, Gilberto Pelayo, Helidoro Hernandez, Cristina Hernandez, Antonio Hernandez Jamie,*  
19 *Gloria Vargas Jamie, Ivan Iles, and Shewkali Rajkumar, John Ahlstead, Gina Ahlstead, Ivan Iles —*  
20 *Against All Defendants)*

21  
22 367. Continuing their chronology of profit-driven deception and intentional wrongdoing,  
23 Defendants not only (1) intentionally placed Plaintiffs into known dangerous and impossible loans in the  
24 name of profit on the secondary market, and, (2) offered Plaintiffs trial loan modifications in an attempt  
25 to grab as much cash as they could before foreclosing – none of which would be applied to the principal  
26 or interest of Plaintiff's loans - with no intent of ever actually modifying Plaintiffs' loans, but in a final  
27 coup-de-grace (3) intentionally foreclosed on plaintiffs despite having no ownership interest in the notes  
28 or deeds of trust, in the name of collecting preposterous and unmerited "foreclosure fees" including:

1 inspection fees, default fees, late fees, advance fees, attorney fees, and trustee fees – hand in hand with  
2 the Trustee Defendants, who while purporting to act merely in their capacity as trustee, act intentionally  
3 and maliciously to foreclose knowing they have no authority to do so, and in knowing violation of  
4 California foreclosure statutes. As discussed above, Trustee Defendants are the vital foreclosure arm of  
5 Defendants’ fraudulent scheme alleged throughout this Complaint.

6 368. Bank Defendants along with Trustee Defendants unilaterally charged these ill-defined  
7 and ambiguous fees whose amounts were *never* disclosed, nor consented to Plaintiffs in any writing or  
8 contract whatsoever. They decided how much they wanted to charge for whatever reason they wanted to  
9 charge it. The amounts they charged were tantamount to price gauging, often charging double, triple or  
10 even quadruple the fair market value for these “services.” The outrageous price markups all inured to  
11 the benefit of the conspiracy of Defendants. As Defendants did not have an ownership interest in the  
12 property upon which to foreclose, these charges and fees were entirely unjustified, and constitute  
13 numerous cognizable sources of restitution.

14 369. In short, Bank Defendants together with Trustee Defendants made money by initiating  
15 foreclosures, and for this very reason intentionally steamrolled wrongful foreclosures over plaintiffs  
16 without having any true possessory or ownership interest in the deed of trust – the document which  
17 confers the power of foreclosure - threatening to wrongfully dispossess Plaintiffs of their homes and  
18 placing them on the streets.

19 370. In the greed-driven world of Defendants, neither law nor ethics would be allowed to  
20 stand as an obstacle in their insatiable hunt for profit.

21 371. Counts 23 through 24 arise under this (Fifth) Cause of Action for “Intentional  
22 Unauthorized Foreclosure in the Pursuit of Profit” and are brought by all Plaintiffs named in this Cause  
23 of Action, against all Defendants named in this Cause of Action.

24  
25 **COUNT 23: WRONGFUL FORECLOSURE**

26 372. Bank Defendants’ continue to demand payment and to foreclose and threaten to foreclose  
27 on Plaintiffs (through co-conspirator Trustee Defendants), despite the facts that:

28 a. The Foreclosing Defendants have no proof that they own the notes and deeds of trust they

1 seek to enforce;

2 b. The Foreclosing Defendants have never received a proper assignment of the Deed of  
3 Trust ("**DOT**") - the document which confers the power of foreclosure. Accordingly,  
4 they have no authority to foreclose.

5 c. There is considerable evidence that the Foreclosing Defendants do not own the notes and  
6 deeds of trust they enforce and seek to enforce and based thereon, Plaintiffs allege that  
7 they do not; and

8 373. As alleged with further detail in Appendix A, in many instances, the foreclosing Bank  
9 Defendants never properly received an assignment of the DOT (and therefore had no authority to  
10 foreclose) because the trusts they were being assigned into had been closed long prior, and therefore  
11 could not legally accept assignment of the Loans and DOTs.

12 a. The reason loans are pooled and placed into these loan trusts named REMIC's is due to  
13 income tax purposes. A REMIC is an "SPV" or Special Purpose Vehicle that is treated by  
14 the IRS as a "QSPE" or Qualifying Special Purpose Entity. It specifically was designed  
15 by Congress to allow the vehicle to not be taxed as the cash flows through the vehicle and  
16 distributed to the investor and certificate holders. It is like an S Corp where there is no  
17 double taxation.

18 b. Pooling and Servicing Agreements only allow loans to be placed into a REMIC for **two**  
19 **years** after the set-up of the Trust due to tax implications. A loan substituted in or out of  
20 such trust after the two year period, results in a massive tax penalty of 100% of the face  
21 value of *all the assets in the trust*.

22 374. The trusts which foreclosed on many of the Plaintiffs never received assignment of the  
23 DOT - the document which confers the power of foreclosure. Specifically, Bank Defendants foreclosed  
24 on numerous Plaintiffs herein on behalf of trusts which had no ownership interest whatsoever in the  
25 DOT, **because the trusts had been-long closed under the terms of their very own PSA**. In other  
26 words Defendants had no authority whatsoever to foreclose on Plaintiffs herein. The foreclosing trust  
27 had no ownership interest in the DOT which would give it the power to foreclose.

28 375. Established authority makes clear that a Plaintiff states a claim for wrongful foreclosure

1 when it is alleged that the assignment to the trust was executed after the closing date of the trust. *Vogan*  
2 *v. Wells Fargo Bank, N.A.*, (E.D. Cal., Nov. 17, 2011,) 2011 WL 5826016 at \*7; *Johnson v. HSBC Bank*  
3 *USA, Nat. Ass'n* (S.D. Cal., Mar. 19, 2012) 2012 WL 928433at \*3.

4 376. As to other Plaintiffs, Bank Defendants and Trustee Defendants foreclosed on them  
5 despite having no ownership interest in the DOT, because the DOT was **never endorsed to them**. In  
6 other words, they never had the authority to foreclose. A Plaintiff states a viable claim for wrongful  
7 foreclosure when it is alleged that the Defendants are “not the proper parties to foreclose.” *Ohlendorf v.*  
8 *Am. Home Mortg.*, (E.D.Cal. 2010) 2010 U.S. Dist. LEXIS 31098, at \*21–24; *Tamburri v. Suntrust*  
9 *Mortgage (N.D. Cal, 2011) 2011 WL 6294472 \*11* [same] *Sacchi v. Mortgage Electronic Registration*  
10 *Systems, Inc. (C.D.Cal. June 24, 2011) 2011 WL 253302 at \*8*; *Castillo v. Skoba* (S.D.Cal. 2010) 2010  
11 WL 3986953, at\*2 [same].

12 377. As to other Plaintiffs herein, Bank Defendants and Trustee Defendants had no authority  
13 to foreclose because *at the time* they initiated foreclosure (by filing a Notice of Default), they had not  
14 yet received an assignment of the DOT. In other words, at the time they initiated foreclosure, they had  
15 no authority to foreclose. “[S]ince the plaintiffs had alleged facts **suggesting the foreclosing party had**  
16 **no legal interest in the deed at the appropriate time**, there [is] a valid cause of action.” *Tamburri v.*  
17 *Suntrust Mortgage (N.D. Cal, 2011) 2011 WL 6294472 \*11*, citing *Sacchi v. Mortgage Electronic*  
18 *Registration Systems, Inc. (C.D.Cal. June 24, 2011) 2011 WL 253302 at \*8* [[holding plaintiff had stated  
19 a valid cause of action for wrongful foreclosure where the foreclosing entity had no authority to  
20 foreclose because it had “**no beneficial interest in the Deed of Trust when it acted to foreclose on**  
21 **Plaintiffs’ home.**”]; *Castillo v. Skoba* (S.D.Cal. 2010) 2010 WL 3986953, at\*2 [same]. Foreclosures  
22 initiated by or on behalf of a party, who at the time had no authority to foreclose are *void ab initio*.  
23 *Tamburri; Castillo*.

24 378. As to other Plaintiffs still, Bank Defendants and Trustee Defendants had no authority to  
25 foreclose because they had failed to comply with Cal. Civ. Code §2923.5 – a necessary prerequisite to  
26 foreclosure – which requires a lender to contact its borrower to disclose alternatives to foreclosure.  
27 Foreclosing Bank Defendants have failed to, and continue to fail to comply with this legal requirement.

28 379. Still, as to other Plaintiffs, Bank Defendants’ and Trustee Defendants’ foreclosures were

1 void because the trustee who conducted the foreclosure sale was an unauthorized trustee who had never  
2 been properly substituted as trustee. Under California Law, a foreclosure sale conducted by an  
3 unauthorized trustee is void as a matter of law. *Dimock v. Emerald Properties* (2000) 198 Cal.App.4th  
4 868.

5 380. Finally, such foreclosures were additionally wrongful insofar as they were intentionally  
6 occasioned by the Frauds of Defendants who (1) concealed the true terms, payments, and nature of the  
7 loans in order to induce borrowers into entering them, knowing that such loans would be impossible for  
8 them to afford, and would result in their default to a *mathematical certainty*, and (2) falsely tampered  
9 with the appraised values of their homes – so that Bank Defendants, Trustee Defendants, and their  
10 conspirators could collect lucrative fees, including **foreclosure fees**. Causing the foreclosure of their  
11 borrowers was an intentional part of their fraudulent scheme. It meant more money.

12 381. Whether or not they can demonstrate ownership of the requisite notes and deeds of trust,  
13 Defendants lack the legal right to enforce the foregoing because they have not complied with disclosure  
14 requirements intended to assure mortgages are funded with monies obtained lawfully.

15 382. Plaintiffs allege that Bank Defendants have made demand for payment on the Plaintiffs  
16 with respect to Plaintiffs' properties at a time when Defendants are incapable of establishing (and do not  
17 have any credible knowledge regarding) who owns the promissory notes Defendants are purportedly  
18 servicing. Plaintiffs believe and thereon allege that because Defendants are not the holders of  
19 Plaintiffs' notes and deeds of trust and are not operating under a valid power from the various current  
20 holders of the notes and deeds of trust, Defendants may not enforce the notes or deeds of trust.

21 383. Bank Defendants have already foreclosed upon the following property owned by the  
22 following Plaintiffs – allegations establishing the specific factual basis of the wrongful nature of the  
23 foreclosure as against each of the Plaintiffs below are set forth in **APPENDIX A**.

24 a) Norberto Zenteno-Flores and Margarita Flores (Appendix A, ¶ 1)  
25 3321 Taurus Lane, Unit #3  
26 Santa Ana, CA 92704

27 b) Sushila Patel (Appendix A, ¶ 5)  
28 5841 Ranch View Road  
Oceanside, CA 92057

- 1 c) Maria del Carmen Torres (Appendix A, ¶ 8)  
2 8332 Brimfield Avenue  
3 Panorama City, CA 91402
- 4 d) Ana Rosa and Gumersindo Castaneda (Appendix A, ¶ 9)  
5 22616 S. Menlo Avenue  
6 Torrance, CA 90502
- 7 e) Adell Aldrich (Appendix A, ¶ 10)  
8 222238 Flanco Road  
9 Woodland Hills, CA 91762
- 10 f) Benjamin Avalos, Jr. (Appendix A, ¶ 12)  
11 108 Cormorant Drive  
12 Ontario, CA 91762
- 13 g) Eugene and Erveta Marzette (Appendix A, ¶ 15)  
14 5707 Sycamore Avenue  
15 Rialto, CA 92377
- 16 h) Elmer and Pearlle Clarke (Appendix A, ¶ 16)  
17 3569 Mulford Avenue  
18 Lynwood, CA 90262
- 19 i) Ferdinand and Josephine Paragas-Whittier (Appendix A, ¶ 17)  
20 10621 Victoria Avenue  
21 Whittier, CA 90604
- 22 j) Mihai Schera (Appendix A, ¶ 22)  
23 35565 Grandview Drive  
24 Yucaipa, CA 92399
- 25 k) Gilberto Pelayo (Appendix A, ¶ 30)  
26 31501 Stoney Creek Drive  
27 Lake Elsinore, CA 92532
- 28 l) Helidoro and Cristina Hernandez (Appendix A, ¶ 34)  
8296 Velvet Lane  
Fontana, CA 92335
- m) Antonio Hernandez Jamie and Gloria Vargas Jamie (Appendix A, ¶ 35)  
630 West 149 Street  
Gardena, CA 90247
- n) Ivan Iles (Appendix A, ¶ 42)

1 1758 Duncan Way  
2 Corona, CA 92881

3 o) Shewkali Rajkumar (Appendix A, ¶ 43)  
4 1420 Stoddard Street  
5 Sacramento, CA 95828

6 p) John Ahlstead and Gina Ahlstead (Appendix A, ¶44)  
7 9529 Brook Drive  
8 Rancho Cucamonga CA 91730

9 q) Ivan Iles (Appendix A, ¶42)  
10 17548 Duncan Way  
11 Corona CA 92881

12 384. Because the foreclosing Bank Defendants are not the holders of the notes and deeds of  
13 trust and are not operating under a valid power from the current holders of the notes and deeds of trust,  
14 Defendants did not have the right to proceed with the foregoing foreclosures.

15 385. Bank Defendants, and Trustee Defendants, acted outrageously, persistently, intentionally  
16 and with actual malice in performing the acts alleged in this cause of action. Accordingly, Plaintiff is  
17 entitled to exemplary and punitive damages in a sum according to proof and to such other relief as is set  
18 forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

19 386. As a result of the foregoing unlawful acts Plaintiffs have been damaged in being  
20 wrongfully deprived of their homes, losing equity, being forced to incur relocation expenses, suffering  
21 emotional distress, being forced to pay foreclosure fees, attorney's fees, trustee fees, suffering damage to  
22 their credit scores, experiencing reduced availability of financing, among the other damages described  
23 throughout this Complaint.

24 **COUNT 24: UNFAIR, UNLAWFUL, AND FRAUDULENT BUSINESS PRACTICES**  
25 **(VIOLATION OF CAL. BUS. & PROF. CODE §17200)**

26 387. The preceding paragraphs and the paragraphs following this cause of action are  
27 incorporated by reference as though fully set forth herein.

28 388. Bank Defendants' and Trustee Defendants' acts described in this action are **Unlawful** in  
that they violate:

- a. The requirement to make contact with a defaulting borrower prior to foreclosure in order to explore alternatives to foreclosure (Cal. Civ. Code §2923.5)
- b. The requirement that the party on behalf of whom foreclosure is being instituted must first have an ownership interest in the Deed of Trust before acting to foreclose. (Cal. Civ. Code §2924 et seq.)
- c. The Requirement that a trustee must first be authorized as a trustee before it can conduct a trustee/foreclosure sale (Cal. Civ. Code §2924 et seq.)
- d. The Requirement that a party must first record an NOD before they have the power to foreclose (Cal. Civ. Code §2924 et seq.).
- e. The Crier Rule (Cal. Civ. Code §2994(g))
- f. The Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code §1788 et seq)

389. Separately, Bank Defendants' acts as described in this Cause of Action are **Fraudulent** as set forth above.

390. Such foreclosures were **additionally** wrongful insofar as they were intentionally occasioned by the Frauds of Defendants who concealed the true terms, payments, and nature of the loans in order to induce borrowers into entering them, knowing that such loans would be impossible for them to afford, and would result in their default to a *mathematical certainty* – so that Plaintiffs and their conspirators and could collect lucrative fees, including **foreclosure fees**. Causing the foreclosure of their borrowers was an intentional part of their fraudulent scheme. It meant more money.

391. Bank Defendants' and Trustee Defendants' acts in intentionally foreclosing upon their borrowers in the name of profit, and/or without authority, as described above are also unfair.

392. Such acts and practices violate established public policy and the harm they cause to consumers in California greatly outweighs any benefits associated with those practices.

393. These actions were immoral, unethical, oppressive, unscrupulous and substantially injurious to similarly situated borrowers, and Plaintiffs herein. Bank Defendants' and Trustee Defendants' conduct had no utility other than for their own ill-gotten gain, and the harm was great not only to Plaintiffs herein, but also to residents of California, broadly, who have seen a decrease in their home and property values as a result of the bursting of the super-heated pricing bubble created by



1 Defendants' intentional wrongful foreclosure which now devastate real estate values.

2 394. At the time of their fraud, Defendants *knew* that their conduct would cause the  
3 precipitous decline in property values throughout the State of California.

4 395. Defendant's acts caused substantial consumer injury with no benefits to consumer  
5 competition. Plaintiffs could not have reasonably avoided these injuries occasioned by Defendants'  
6 intentional deceit, misrepresentation, and omission. Further, Defendants acts significantly threatened  
7 harm to competition.

8 396. Defendant's acts caused substantial consumer injury with no benefits to consumer  
9 competition. Plaintiffs could not have reasonably avoided these injuries occasioned by Defendants'  
10 intentional deceit, misrepresentation, and omission. Further, Defendants acts significantly threatened  
11 harm to competition.

12 397. Ally and Bank Defendants acted with malice and with the intent of artificially inflating  
13 California Real estate properties generally, as well as the values of Plaintiffs' individual properties and  
14 homes.

15 398. As a result of Defendants' unfair competition, Plaintiffs are entitled to restitution for all  
16 sums received by Defendants with respect to Defendants' unlawful and/or unfair and/or fraudulent  
17 conduct, including, without limitation, interest payments made by Plaintiffs, fees paid to Defendants,  
18 including, without limitation, trustee fees, and the excessive fees paid at Defendants' direction, and  
19 premiums received upon selling the mortgages at an inflated value.

20 399. As a result of the foregoing unfair, unlawful, and fraudulent acts Plaintiffs have been  
21 damaged in being wrongfully deprived of their homes, losing equity, being forced to incur relocation  
22 expenses, suffering emotional distress, being forced to pay foreclosure fees, attorney's fees, trustee fees,  
23 suffering damage to their credit scores, experiencing reduced availability of financing, among the other  
24 damages described throughout this Complaint.

25  
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as follows:

28 1. General, Actual, Compensatory, Special and Exemplary damages according to proof

1 under the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Tenth, Eleventh, Twelfth, Fourteenth,  
2 Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twenty-First, and Twenty-Third Counts, and  
3 any other Counts for which such relief may be available;

4 2. Punitive Damages under the First, Second, Sixth, Tenth, Fifteenth, and Sixteenth Counts  
5 and any other Counts for which such relief may be available;

6 3. Statutory relief according to proof under the Twelfth, Fourteenth, Twentieth, and  
7 Twenty-First Counts and any other Counts for which such relief may be available;

8 4. Restitution and Injunctive Relief under the Ninth, Thirteenth, Eighteenth, Twenty-Second  
9 and Twenty Fourth Counts and any other Counts for which such relief may be available;

10 5. Rescission under the Eighteenth Count;

11 6. On all Counts, for costs of suit herein;

12 7. On all Counts, for pre- and post-judgment interest;

13 8. On all Counts for which attorney's fees may be awarded pursuant to the governing  
14 contract, by statute or otherwise, reasonable attorneys' fees; and

15 9. On all Counts, for such other and further relief as this Court may deem just and proper.  
16

17 Dated: August 9, 2013

Respectfully submitted,

18  
19 **BROOKSTONE LAW, PC**

20  
21 By: 

Vito Torchia, Jr.

Attorneys for Plaintiffs  
22  
23  
24  
25  
26  
27  
28

PLAINTIFF: EO MACARTHUR, LLC	CASE NUMBER:
DEFENDANT: BROOKSTONE LAW, P.C.	30-2013-00660219-CL-UD-HNB

7. ☒ Plaintiff and defendant further stipulate as follows (*specify*):

Plaintiff agrees to hold this Stipulation and not file it with the Court, so long as Defendant surrenders possession of the premises referred to in paragraph 2, on or before the close of business, September 8, 2013. If Defendant surrenders possession of the premises referred to in paragraph 2 on or before September 8, 2013, Plaintiff agrees to dismiss this matter without prejudice.

8. a. The parties named in item 1 understand that they have the right to (1) have an attorney present and (2) receive notice of and have a court hearing about any default in the terms of this stipulation.

b. Date:

Daniel P. Stimpert, Esq., Attorney for Plaintiff

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

☐ Continued on Attachment 8b (form MC-025).

c. Date:

8/6/2013

Vito Torchia, Jr., Attorney for Defendant

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

☐ Continued on Attachment 8c (form MC-025).

9. IT IS SO ORDERED.

Date:

JUDICIAL OFFICER

UD-115

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and state bar number, and address): <b>Daniel P. Stimpert, Esq.</b> SBN: 147420 <b>STIMPERT &amp; FORD, LLP</b> 6300 Wilshire Blvd., Suite 1890, Los Angeles, CA 90048-5220 TELEPHONE NO.: (323) 782-6782 FAX NO. (Optional): (323) 782-6788 E-MAIL ADDRESS (Optional): info@stimpertford.com ATTORNEY FOR (Name): EO MacArthur, LLC		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 4601 Jamboree Road MAILING ADDRESS: 4601 Jamboree Road CITY AND ZIP CODE: Newport Beach, 92660-2595 BRANCH NAME: Harbor Justice Center - Newport Beach Facility		
PLAINTIFF: EO MACARTHUR, LLC  DEFENDANT: BROOKSTONE LAW, P.C.		
STIPULATION FOR ENTRY OF JUDGMENT (Unlawful Detainer)		CASE NUMBER: 30-2013-00660219-CL-UD-HNB

1. IT IS STIPULATED by plaintiff (name each): EO MACARTHUR, LLC and  
defendant (name each): BROOKSTONE LAW, P.C.
2. ☒ Plaintiff ☐ Defendant (specify name): is awarded
- a. ☒ possession of the premises located at (street address, apartment number, city, and county):  
4000 MacArthur Blvd, Suite 1110, Newport Beach, CA 92660 Orange County
- b. ☐ cancellation of the rental agreement. ☐ forfeiture of the lease.
- c. ☐ past due rent \$
- d. ☐ total holdover damages \$
- e. ☐ attorney fees \$
- f. ☐ costs \$
- g. ☐ deposit of \$ ☐ See item 3.
- h. ☒ other (specify): \$10,000.00 as and for general damages.
- i. Total \$ to be paid by ☐ (date): ☐ installment payments (see item 5)
3. ☐ Deposit. If not awarded under item 2g, then plaintiff must
- a. ☐ return deposit of \$ to defendant by (date):
- b. ☐ give an itemized deposit statement to defendant within three weeks after defendant vacates the premises  
(Civ. Code, § 1950.5).
- c. ☐ mail the ☐ deposit ☐ itemized statement to the defendant at (mailing address):
4. ☒ A writ of possession will issue immediately, but there will be no lockout before (date): September 9, 2013
5. ☐ AGREEMENT FOR INSTALLMENT PAYMENTS
- a. Defendant agrees to pay \$ on the (specify day) day of each month beginning  
on (specify date) until paid in full.
- b. If any payment is more than (specify) days late, the entire amount in item 2i will become immediately due and  
payable plus interest at the legal rate.
6. a. ☒ Judgment will be entered now.
- b. ☐ Judgment will be entered only upon default of payment of the amount in item 2i or the payment arrangement in item 5a.  
The case is calendared for dismissal on (date and time) in  
department (specify) unless plaintiff or defendant otherwise notifies the court.
- c. ☐ Judgment will be entered as stated in Judgment —Unlawful Detainer Attachment (form UD-110S), which is attached.
- d. ☐ Judgment will be entered as stated in item 7.

PLAINTIFF: EO MACARTHUR, LLC	CASE NUMBER:
DEFENDANT: BROOKSTONE LAW, P.C.	30-2013-00660219-CL-UD-HNB

7. ☒ Plaintiff and defendant further stipulate as follows (*specify*): Plaintiff agrees to hold this Stipulation and not file it with the Court, so long as Defendant surrenders possession of the premises referred to in paragraph 2, on or before the close of business, September 8, 2013. If Defendant surrenders possession of the premises referred to in paragraph 2 on or before September 8, 2013, Plaintiff agrees to dismiss this matter without prejudice.

8. a. The parties named in item 1 understand that they have the right to (1) have an attorney present and (2) receive notice of and have a court hearing about any default in the terms of this stipulation.

b. Date:

Daniel P. Stimpert, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

☐ Continued on Attachment 8b (form MC-025).

c. Date:

Attorney for BROOKSTONE LAW, PC

Vito Torchia, Jr.

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

☐ Continued on Attachment 8c (form MC-025).

9. IT IS SO ORDERED.

Date:

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and state bar number, and address): <b>Daniel P. Stimpert, Esq.</b> SBN: 147420 <b>STIMPERT &amp; FORD, LLP</b> 6300 Wilshire Blvd., Suite 1890, Los Angeles, CA 90048-5220 TELEPHONE NO.: (323) 782-6782 FAX NO. (Optional): (323) 782-6788 E-MAIL ADDRESS (Optional): info@stimpertford.com ATTORNEY FOR (Name): EO MacArthur, LLC		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 4601 Jamboree Road MAILING ADDRESS: 4601 Jamboree Road CITY AND ZIP CODE: Newport Beach, 92660-2595 BRANCH NAME: Harbor Justice Center- Newport Beach Facility		
PLAINTIFF: EO MACARTHUR, LLC  DEFENDANT: BROOKSTONE LAW, P.C.		
STIPULATION FOR ENTRY OF JUDGMENT (Unlawful Detainer)		CASE NUMBER: 30-2013-00660219-CL-UD-HNB

1. IT IS STIPULATED by plaintiff (name each): EO MACARTHUR, LLC and  
defendant (name each): BROOKSTONE LAW, P.C.
2. ☒ Plaintiff ☐ Defendant (specify name): is awarded  
a. ☒ possession of the premises located at (street address, apartment number, city, and county):  
4000 MacArthur Blvd., Suite 1110, Newport Beach, CA 92660 Orange County  
b. ☐ cancellation of the rental agreement. ☐ forfeiture of the lease.  
c. ☐ past due rent \$  
d. ☐ total holdover damages \$  
e. ☐ attorney fees \$  
f. ☐ costs \$  
g. ☐ deposit of \$ ☐ See item 3.  
h. ☒ other (specify): \$10,000.00 as and for general damages.  
i. Total \$ to be paid by ☐ (date): ☐ installment payments (see item 5)
3. ☐ Deposit. If not awarded under item 2g, then plaintiff must  
a. ☐ return deposit of \$ to defendant by (date):  
b. ☐ give an itemized deposit statement to defendant within three weeks after defendant vacates the premises  
(Civ. Code, § 1950.5).  
c. ☐ mail the ☐ deposit ☐ itemized statement to the defendant at (mailing address):
4. ☒ A writ of possession will issue immediately, but there will be no lockout before (date): September 9, 2013
5. ☐ AGREEMENT FOR INSTALLMENT PAYMENTS  
a. Defendant agrees to pay \$ on the (specify day) day of each month beginning  
on (specify date) until paid in full.  
b. If any payment is more than (specify) days late, the entire amount in item 2i will become immediately due and  
payable plus interest at the legal rate.
6. a. ☐ Judgment will be entered now.  
b. ☐ Judgment will be entered only upon default of payment of the amount in item 2i or the payment arrangement in item 5a.  
The case is calendared for dismissal on (date and time) in  
department (specify) unless plaintiff or defendant otherwise notifies the court.  
c. ☐ Judgment will be entered as stated in Judgment —Unlawful Detainer Attachment (form UD-110S), which is attached.  
d. ☒ Judgment will be entered as stated in item 7.

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1           1.       Plaintiff Carolyn Hairston ("Hairston") discussed refinancing an existing  
2 mortgage on her property located at 1544-46 Hauser Boulevard, Los Angeles, CA 90019 and  
3 A.P.N. 5069-031-030 with a loan consultant (the "Loan Consultant"), a representative and  
4 authorized agent of Paul Financial, LLC, a correspondent of GMAC Mortgage Group, Inc. and  
5 authorized by GMAC Mortgage Group, Inc. and Defendants herein (the "Defendants") to lend  
6 on its behalf, in or around January, 2007. In the course of their discussions ranging from January  
7 2007 until March 2007, Defendants and Loan Consultant steered her into a negatively amortized  
8 PayOption ARM in the amount of \$550,000.00 with an interest rate at 7.875% for a term of 30  
9 years. Little did Hairston know, however, the disclosed interest rate was never "fixed" but  
10 applied to only her first monthly payment and could adjust every six months thereafter. The  
11 maximum interest rate is 12.875%. The amount of Hairston's minimum monthly payment was  
12 "fixed" for 12 months and could adjust every 12 months thereafter. When the amount of the  
13 minimum monthly payment is insufficient to cover the amount of interest due, then the amount  
14 of that deficiency is added onto the unpaid principal balance of her loan. The recast point of this  
15 loan is 115% of the original loan amount. This loan was originated by GMAC and Defendants,  
16 on the note and deed of trust Paul Financial, LLC is identified as the lender, and GMAC is  
17 currently servicing the loan.

18           Defendants and Loan Consultant represented to Hairston that her monthly payment  
19 would always be \$114.58. Although the amount of Hairston's initial, disclosed minimum  
20 monthly payment was \$114.58, Defendants and Loan Consultant failed to clarify their partially  
21 true representations and advise Hairston: (1) how the interest rate on her loan was calculated; (2)  
22 that the initial, disclosed minimum monthly payment of \$114.58 would not always be available;  
23 (3) that the initial, disclosed minimum monthly payment would not be the permanent payment  
24 under the loan despite Defendants' and Loan Consultant's affirmative representations to the  
25 contrary; (4) that by paying the initial, disclosed minimum monthly payment she would be  
26 definitively deferring interest on her loan, increasing the principal balance of her loan every time  
27 she made the minimum monthly payment; (5) that by paying the minimum monthly payment the  
28 principal balance of her loan was certain to increase; or (6) her loan would be recast within a few

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 years and she would be forced to pay considerably higher payments.

2 The disclosures in Hairston's loan documents discussing negative amortization only  
3 frame negative amortization as a mere **possibility** rather than a **certainty** when making the  
4 minimum payment. However, the reality was that by making the minimum payment, negative  
5 amortization was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending  
6 Disclosure Statement ("TILDS"), which set forth what appeared to be the *required* payment  
7 schedule, fails to disclose that making payments pursuant to the TILDS payment schedule *will*  
8 result in negative amortization. Hairston was not provided, before entering into the loans, with  
9 any other payment schedule or with any informed option to make payments different than those  
10 listed in the TILDS payment schedule. Had Defendants disclosed that by making the payment  
11 pursuant to the TILDS Hairston would be deferring interest, or had Defendants disclosed the  
12 payment amounts sufficient to avoid negative amortization from occurring, Hairston would not  
13 have entered into the loan. **Defendants intentionally omitted a clear disclosure of the nature**  
14 **of Hairston's loan because giving a clear explanation of how the loan worked would have**  
15 **punctured the illusion of a low-payment, low interest rate loan.**

16 Further, Defendants and Loan Consultant advised her that she was eligible for a Low Doc  
17 Loan. Unbeknownst to her at the time, Defendants and Loan Consultant used this low  
18 documentation requirement to fraudulently inflate her income by \$7,000, a factor of 250%; and  
19 in doing so, Defendants and Loan Consultant caused her to be placed into a loan whose  
20 payments she could not afford given her true, un-inflated monthly income. Defendants and Loan  
21 Consultant altered Hairston's loan application without her knowing consent and authorization as  
22 Loan Consultant completed Hairston's application without giving Hairston an opportunity to  
23 review the loan application.

24 Defendants and Loan Consultant also explicitly represented to Hairston that she could  
25 afford her loan and further represented that she could shoulder the additional financial burden of  
26 repaying her loan in consideration of her other existing debts; yet failed to disclose that the fully  
27 amortized monthly payment on the loan was \$6,804.14. Given Hairston's true monthly income  
28 of \$4,500.00, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio,



**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 before any other debts are even considered, of over 151%- grossly in excess of industry standard  
2 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
3 and Loan Consultant further represented to Hairston that she could rely on the assessment that  
4 she was "qualified" to mean that she could afford the loan. Because of Hairston's lack of  
5 familiarity with how much debt a person can and should reasonably take on compared to her  
6 monthly income, and because Hairston reasonably relied on Defendants' and Loan Consultant's  
7 expertise that any payment she was "qualified" for would take into account what the maximum  
8 debt a person such as Hairston should be shouldering was, Hairston reasonably believed  
9 Defendants' and Loan Consultant's representations that she could afford her loan and its  
10 payments. Although Defendants and the Loan Consultant represented to Hairston that she was  
11 "qualified" for her loan and could afford her loan and its monthly payments, Defendants and the  
12 Loan Consultant misled Hairston into believing that her monthly payments would always only be  
13 \$114.58. Furthermore, at no point did Defendants or Loan Consultant clarify Hairston's false  
14 belief and advise her that \$114.58 would not be her permanent payment under the loan, or that  
15 every time she made a monthly payment in the amount of \$114.58, which is less than interest  
16 only, she would be deferring interest on her loan, increasing the principal balance of her loan.

17 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
18 on behalf of Defendants were accurate and made in good faith. On or around February 2007, an  
19 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
20 on Hairston's home, which was fraudulently inflated to a grossly and intentionally overstated  
21 value. Defendants and Loan Consultant represented that, per appraisal, Hairston's home was  
22 worth \$1,200,000.00 at the time she entered into her loan, and that such a valuation was a true  
23 and correct measure of her home's worth. The current fair market value of Hairston's home is  
24 approximately \$511,922.00. Hairston alleges that the appraisal was artificially inflated, and that  
25 she has suffered damages in the amount of \$688,078.00 (\$1,200,000.00-\$511,922.00) due to a  
26 substantial loss of equity in her home as a result of Defendants' fraudulent inflation and other  
27 acts described herein.

28 Defendants and Loan Consultant also represented to Hairston that she would be able to

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 refinance her loan at a later time. Hairston relied on this assurance in deciding to enter into the  
2 mortgage contract. However, Hairston has not been able to refinance her loan. Defendants and  
3 Loan Consultant also represented that it would modify Hairston's loan, and Hairston relied on  
4 this representation in deciding to enter into the loan. However, Hairston was unable to modify  
5 her loan.

6 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
7 reputable and complied with industry standard underwriting guidelines and were engaged in  
8 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
9 made in good faith; (3) Hairston could afford the loan ; (4) She was "qualified" for her loan; (5)  
10 "qualified" meant that she could afford her loan; (6) she would be able to modify her loan and  
11 (7) She would be able to refinance her loan.

12 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
13 otherwise improperly disclosed to Hairston that: (1) Defendants and Loan Consultant knew that  
14 she could not and would not be able to afford her loan and that there was a very high probability  
15 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
16 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
17 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
18 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
19 to communicate that she could actually "afford" the loan which she was being given; (5)  
20 Defendants had abandoned its conventional lending business, prudent lending standards, and  
21 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
22 Hairston's home to require her to borrow more money with the knowledge that the true value of  
23 Hairston's home was insufficient to justify the amount of Hairston's loan; or (7) Defendants  
24 knew that due to its scheme of fraudulently manipulating and inflating property values  
25 throughout the State of California that the real estate market would crash and Hairston would  
26 lose substantial equity in her home.

27 Based on these misrepresentations and omissions, the material facts concerning  
28 Hairston's loan were concealed from her, and she decided to move forward with her loan. On

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 March 30, 2007, Hairston signed the loan and Deed of Trust, before a notary. Had she known the  
2 truth however, Hairston would not have accepted the loan. As a result of Defendants' fraudulent  
3 acts described throughout this complaint, Hairston has lost substantial equity in her home, has  
4 damaged or destroyed credit, and at the time Hairston entered into the loan her home was worth  
5 \$1,200,000.00, now her home is worth approximately \$511,922.00. Hairston did not discover  
6 any of these misrepresentations or omissions until after a consultation with legal counsel at  
7 Brookstone Law, and through a complete and thorough investigation of the loan documentation,  
8 and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described  
9 throughout this complaint, were brought to light on or around July 19, 2011. (True and correct  
10 copy of the aforementioned documents are attached hereto as *Exhibit 1*).

11         2. Plaintiff Carolyn Hairston ("Hairston") discussed refinancing an existing  
12 mortgage on her property located at 1534-36 Hauser Blvd, Los Angeles, CA 90019 and A.P.N.  
13 5069-031-032 with a Loan Consultant ("Loan Consultant") with Paul Financial, LLC, a  
14 correspondence of GMAC Financial and Defendants herein ("the Defendants"), and authorized  
15 by Defendants to lend on its behalf, in or around January 2007. In the course of their discussions  
16 ranging from January 2007 until March 2007, Defendants and Loan Consultant steered her into a  
17 negatively amortized PayOption ARM in the amount of \$500,000.00 with an interest rate at  
18 0.250% for a term of 30 years. Little did Hairston know that the interest rate of 0.250% is the  
19 amount used to calculate the amount of her minimum monthly payment. Hairston also did not  
20 know that she was accruing interest on her loan at the interest rate of 8.375%. Hairston's true  
21 interest rate of 8.375% is "fixed" for ten years and can adjust every six months thereafter. The  
22 maximum interest rate is 13.375%. The amount of Hairston's minimum monthly payment is also  
23 "fixed" for ten years. When the amount of the minimum monthly payment is insufficient to cover  
24 the amount of interest due, then the amount of that deficiency is added onto the unpaid principal  
25 balance of her loan. Her loan has a recast point of 155% of the original amount. Once her loan  
26 hits the recast point, Hairston will be obligated to make interest only payment for the remainder  
27 of the ten year "fixed" period. This loan was originated by GMAC and Defendants, on the note  
28 and deed of trust Paul Financial, LLC is identified as the lender, and GMAC is currently

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 servicing the loan.

2 Defendants and Loan Consultant recommended the loan, representing that this was a  
3 worthy loan. Defendants and Loan Consultant represented to Hairston that her monthly payment  
4 would always be \$104.00. Although the amount of Hairston's initial, minimum monthly payment  
5 was \$104.00, Defendants and Loan Consultant failed to clarify their partially true representations  
6 and advise Hairston: (1) how the interest rate on her loan was calculated; (2) that the initial  
7 minimum monthly payment of \$104.00 would not always be available; (3) that the initial  
8 minimum monthly payment would not be the permanent payment under the loan despite  
9 Defendants' and Loan Consultant's affirmative representations to the contrary; (4) that by  
10 paying the initial minimum monthly payment she would be definitively deferring interest on her  
11 loan, increasing the principal balance of her loan every time she made the minimum monthly  
12 payment; (5) that by paying the minimum monthly payment the principal balance of her loan was  
13 certain to increase; or (6) her loan would be recast within a few years and she would be forced to  
14 pay considerably higher payments.

15 The disclosures in Hairston's loan documents discussing negative amortization only  
16 frame negative amortization as a mere **possibility** rather than a **certainty** when making the  
17 minimum payment. However, the reality was that by making the minimum payment, negative  
18 amortization was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending  
19 Disclosure Statement ("TILDS"), which set forth what appeared to be the *required* payment  
20 schedule, fails to disclose that making payments pursuant to the TILDS payment schedule *will*  
21 result in negative amortization. Hairston was not provided, before entering into the loans, with  
22 any other payment schedule or with any informed option to make payments different than those  
23 listed in the TILDS payment schedule. Had Defendants disclosed that by making the payment  
24 pursuant to the TILDS Hairston would be deferring interest, or had Defendants disclosed the  
25 payment amounts sufficient to avoid negative amortization from occurring, Hairston would not  
26 have entered into the loan. **Defendants intentionally omitted a clear disclosure of the nature**  
27 **of Hairston's loan because giving a clear explanation of how the loan worked would have**  
28 **punctured the illusion of a low-payment, low interest rate loan.**

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 Defendants and Loan Consultant altered Hairston's loan application without her knowing  
2 consent or authorization as Loan Consultant completed Hairston's application without giving  
3 Hairston an opportunity to review the loan application. Further, Defendants and Loan Consultant  
4 advised her that she was eligible for a Low Doc Loan. Unbeknownst to her at the time,  
5 Defendants and Loan Consultant used this low documentation requirement to fraudulently inflate  
6 her income and in doing so, Defendants and Loan Consultant caused her to be placed into a loan  
7 whose payments she could not afford given her true, un-inflated monthly income.

8 Defendants and Loan Consultant also explicitly represented to Hairston that she could  
9 afford her loan and further represented that she could shoulder the additional financial burden of  
10 repaying her loan in consideration of her other existing debts; yet failed to disclose that the fully  
11 amortized monthly payment on the loan was \$6,517.23. Given Hairston's true monthly income  
12 of \$4,500.00, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio,  
13 before any other debts are even considered, of over 144%- in excess of industry standard  
14 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
15 and Loan Consultant further represented to Hairston that she could rely on the assessment that  
16 she was "qualified" to mean that she could afford the loan. Because of Hairston's lack of  
17 familiarity with how much debt a person can and should reasonably take on compared to her  
18 monthly income, and because Hairston reasonably relied on Defendants' and Loan Consultant's  
19 expertise that any payment she was "qualified" for would take into account what the maximum  
20 debt a person such as Hairston should be shouldering was, Hairston reasonably believed  
21 Defendants' and Loan Consultant's representations that she could afford her loan and its  
22 payments. Although Defendants and the Loan Consultant represented to Hairston that she was  
23 "qualified" for her loan and could afford her loan and its monthly payments, Defendants and the  
24 Loan Consultant misled Hairston into believing that her monthly payments would always only be  
25 \$104.00. Furthermore, at no point did Defendants or Loan Consultant clarify Hairston's false  
26 belief and advise her that \$104.00 would not be her permanent payment under the loan, or that  
27 every time she made a monthly payment in the amount of \$104.00, which is less than interest  
28 only, she would be deferring interest on her loan, increasing the principal balance of her loan.

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1 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
2 on behalf of Defendants were accurate and made in good faith. On or around March 2005, an  
3 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
4 on Hairston's home, which was fraudulently inflated to a grossly and intentionally overstated  
5 value. Defendants and Loan Consultant represented that, per appraisal, Hairston's home was  
6 worth \$1,000,000.00 at the time she entered into her loan, and that such a valuation was a true  
7 and correct measure of her home's worth. The current fair market value of Hairston's home is  
8 approximately \$281,312.00. Hairston alleges that the appraisal was artificially inflated, and that  
9 she has suffered damages in the amount of \$718,688.00 (\$1,000,000.00-\$281,312.00) due to a  
10 substantial loss of equity in her home as a result of Defendants' fraudulent inflation and other  
11 acts described herein.

12 Due to the economic crash, caused by the Defendants fraudulent acts described through  
13 this complain, Hairston suffered from extreme financial hardship, and sought the assistance of  
14 the Defendants in repaying her loan. Hairston applied for loan modification with the Defendants.  
15 The Defendants delayed processing, repeatedly demanding that Hairston furnish duplicate  
16 documentation and information over the course of four months. Hairston was ultimately denied  
17 a loan modification because she did not have sufficient income. At the time Hairston applied for  
18 a loan modification her "fixed" income was the same as it was when she entered into the loan.

19 Hairston inquired about getting a loan modification HAMP. A representative an  
20 authorized agent of Defendants informed Hairston that she did not qualify for HAMP but refused  
21 to provide a reason why. Moreover, the Defendants failed to provide adequate information or  
22 communication regarding the loan modification programs to Hairston.

23 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
24 reputable and complied with industry standard underwriting guidelines and were engaged in  
25 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
26 made in good faith; (3) Hairston could afford the loan ; (4) she was "qualified" for her loan; (5)  
27 "qualified" meant that she could afford her loan; (6) she would be able to modify her loan in the  
28 future; and (7) Defendants would refinance her loan in the future.

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1 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
2 otherwise improperly disclosed to Hairston that: (1) Defendants and Loan Consultant knew that  
3 she could not and would not be able to afford her loan and that there was a very high probability  
4 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
5 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
6 "qualification" process was for Defendants' own protection and not her; (4) that Defendants' and  
7 Loan Consultant's representations that she was "qualified" to pay her loan was not intended to  
8 communicate that she could actually "afford" the loan which she was being given; (5)  
9 Defendants had abandoned its conventional lending business, prudent lending standards, and  
10 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
11 Hairston's home to require her to borrow more money with the knowledge that the true value of  
12 Hairston's home was insufficient to justify the amount of Hairston's loan; or (7) Defendants  
13 knew that due to its scheme of fraudulently manipulating and inflating property values  
14 throughout the State of California that the real estate market would crash and Hairston would  
15 lose substantial equity in her home.

16 Based on these misrepresentations and omissions, the material facts concerning  
17 Hairston's loan were concealed from her, and she decided to move forward with her loan. On  
18 March 22, 2007, Hairston signed the loan and Deed of Trust, before a notary. Had she known the  
19 truth however, Hairston would not have accepted the loan. As a result of Defendants' fraudulent  
20 acts described throughout this complaint Hairston has lost substantial equity in her home, has  
21 damaged or destroyed credit, and at the time Hairston entered into the loan her home was worth  
22 \$1,000,000.00, now her home is worth approximately \$281,312.00. Hairston did not discover  
23 any of these misrepresentations or omissions until after a consultation with legal counsel at  
24 Brookstone Law, and through a complete and thorough investigation of the loan documentation,  
25 and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described  
26 throughout this complaint, were brought to light on or around July 5, 2011. (True and correct  
27 copy of the aforementioned documents are attached hereto as *Exhibit 2*).

28 3. Plaintiffs William Mimiaga ("Mimiaga") and Christine Petersen ("Petersen")

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1 discussed refinancing an existing mortgage on their property located at 936 Coronado Drive,  
2 Costa Mesa, CA 92626 and APN 141-323-21 with a Loan Consultant ("Loan Consultant") with  
3 Homecomings Financial, LLC, a correspondent of GMAC and the Defendants (the  
4 "Defendants"), and authorized by Defendants to lend on its behalf, in or around November 2006.  
5 In the course of their discussions ranging from November 2006 until January 2007, Defendants  
6 and Loan Consultant steered them into a fixed rate Interest-Only mortgage in the amount of  
7 \$534,000.00 with an interest rate at 6.500% for a term of 30 years. Little did Mimiaga and  
8 Petersen know, however, payments made during the first ten years of their loan were Interest-  
9 Only. This loan was originated by GMAC and Defendants, on the note and deed of trust  
10 Homecomings Financial, LLC is identified as the lender, and GMAC is currently servicing the  
11 loan.

12 Defendants and Loan Consultant represented to Mimiaga and Petersen that their monthly  
13 payment would always be \$2,892.50 Although the amount of Mimiaga and Petersen's initial  
14 monthly payment was \$2,892.50, Defendants and Loan Consultant failed to clarify their partially  
15 true representations and advise Mimiaga and Petersen that: (1) their monthly payment would not  
16 pay down any of their principal balance during the Interest-Only period, or (2) their monthly  
17 payment would drastically increase at the end of the Interest-Only period, or (3) the amount of  
18 their initial, disclosed monthly payment would not remain "fixed" for the entire term of his loan.

19 Defendants and Loan Consultant altered Mimiaga and Petersen's loan application without  
20 their knowing consent or authorization as Loan Consultant completed Mimiaga and Petersen's  
21 application without giving Mimiaga and Petersen an opportunity to review the loan application.  
22 Further, Defendants and Loan Consultant advised them that they were eligible for a Low Doc  
23 Loan. Unbeknownst to them at the time, Defendants and Loan Consultant used this low  
24 documentation requirement to fraudulently inflate their income; and in doing so, Defendants and  
25 Loan Consultant caused them to be placed into a loan whose payments they could not afford  
26 given their true, un-inflated monthly income.

27 Defendants and Loan Consultant also explicitly represented to Mimiaga and Petersen that  
28 they could afford their loan and further represented that they could shoulder the additional



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1 financial burden of repaying their loan in consideration of their other existing debts; yet failed to  
2 disclose that the fully amortized monthly payment on the loan was \$3,981.36. Defendants and  
3 Loan Consultant further represented to Mimiaga and Petersen that they could rely on the  
4 assessment that they were “qualified” to mean that they could afford the loan. Because of  
5 Mimiaga and Petersen’s lack of familiarity with how much debt a person can and should  
6 reasonably take on compared to their monthly income, and because Mimiaga and Petersen  
7 reasonably relied on Defendants’ and Loan Consultant’s expertise that any payment they were  
8 “qualified” for would take into account what the maximum debt a person such as Mimiaga and  
9 Petersen should be shouldering was, Mimiaga and Petersen reasonably believed Defendants’ and  
10 Loan Consultant’s representations that they could afford their loan and its payments. Although  
11 Defendants and Loan Consultant represented to Mimiaga and Petersen that they were “qualified”  
12 for their loan and could afford their loan and its monthly payments, Defendants and Loan  
13 Consultant misled Mimiaga and Petersen into believing that their monthly payments would  
14 always only be \$2,892.50. Furthermore, at no point did Defendants or Loan Consultant clarify  
15 Mimiaga and Petersen’s false belief and advise them that \$2,892.50 would not be their  
16 permanent payment under the loan, or that every time they made a monthly payment in the  
17 amount of \$2,892.50, they were not paying down any of their principal balance.

18 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
19 on behalf of Defendants were accurate and made in good faith. On or around January 2007,  
20 Bradbury Appraisal Service, Inc., an appraisal company under the direct control and supervision  
21 of Defendants, conducted an appraisal on Mimiaga and Petersen’s home, which was fraudulently  
22 inflated to \$715,000.00 - a grossly an intentionally overstated value. The current fair market  
23 value of Petersen’s home is approximately \$494,202.00. Mimiaga and Petersen allege that the  
24 appraisal was artificially inflated, and that they have suffered damages in the amount of  
25 \$220,798.00 (\$715,000.00-\$494,202.00) due to a substantial loss of equity in their home as a  
26 result of Defendants’ fraudulent inflation and other acts described herein.

27 Defendants and Loan Consultant also represented to Mimiaga and Petersen that they  
28 would be able to refinance their loan at a later time. Mimiaga and Petersen relied on this

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1 assurance in deciding to enter into the mortgage contract. However, Mimiaga and Petersen have  
2 not been able to refinance their loan because they did not generate enough income, had a low  
3 credit score and the value of their home was of under value.

4 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
5 reputable and complied with industry standard underwriting guidelines and were engaged in  
6 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
7 made in good faith; (3) Mimiaga and Petersen could afford the loan; (4) they were "qualified" for  
8 their loan; (5) "qualified" meant that they could afford their loan; (6) Defendants would modify  
9 their loan; and (7) they would be able to refinance their loan.

10 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
11 otherwise improperly disclosed to Mimiaga and Petersen that: (1) Defendants and Loan  
12 Consultant knew that they could not and would not be able to afford their loan and that there was  
13 a very high probability that they would default and/or be foreclosed upon; (2) Defendants had an  
14 incentive to sell their loan, and did sell their loan at fraudulently inflated prices; (3) Defendants'  
15 and Loan Consultant's "qualification" process was for Defendants' own protection and not  
16 theirs; (4) that Defendants' and Loan Consultant's representations that they were "qualified" to  
17 pay their loan was not intended to communicate that they could actually "afford" the loan which  
18 they were being given; (5) Defendants had abandoned its conventional lending business, prudent  
19 lending standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
20 appraiser to over-value Mimiaga and Petersen's home to require them to borrow more money  
21 with the knowledge that the true value of Mimiaga and Petersen's home was insufficient to  
22 justify the amount of Mimiaga and Petersen's loan; or (7) Defendants knew that due to its  
23 scheme of fraudulently manipulating and inflating property values throughout the State of  
24 California that the real estate market would crash and Petersen would lose substantial equity in  
25 their home.

26 Based on these misrepresentations and omissions, the material facts concerning Mimiaga  
27 and Petersen's loan were concealed from them, and they decided to move forward with their  
28 loan. On January 24, 2007, Mimiaga and Petersen signed the loan and Deed of Trust, before a

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1 notary. Had they known the truth however, Mimiaga and Petersen would not have accepted the  
2 loan. As a result of Defendants' fraudulent acts described throughout this complaint Mimiaga  
3 and Petersen have lost substantial equity in their home, have damaged or destroyed credit, and at  
4 the time Mimiaga and Petersen entered into the loan their home was worth \$715,000.00, now  
5 their home is worth approximately \$494,202.00. Mimiaga and Petersen did not discover any of  
6 these misrepresentations or omissions until after a consultation with legal counsel at Brookstone  
7 Law, and through a complete and thorough investigation of the loan documentation, and a  
8 discussion of the surrounding facts, the fraudulent acts of the Defendants, as described  
9 throughout this complaint, were brought to light on or around January 12, 2011. (True and  
10 correct copy of the aforementioned documents are attached hereto as *Exhibit 3*).

11 4. Plaintiffs Robin Gaston and Patrick Gaston (collectively referred to as "Mr. and  
12 Mrs. Gaston") discussed refinancing an existing mortgage on their property located at 10726  
13 Lynn Circle, Cypress, CA 90630, A.P.N.:134-553-39 with a Loan Consultant ("Loan  
14 Consultant"), a representative and authorized agent of Homecoming Financial Corporation and  
15 Defendants herein (the "Defendants") in or around August 2006. In the course of their  
16 discussions ranging from August 2006 until October 2006, Defendants and Loan Consultant  
17 steered them into a fixed rate mortgage in the amount of \$552,000.00 with an interest rate at  
18 4.125% for a term of 30 years. This loan was originated by GMAC, on the note and deed of trust  
19 Homecoming Financial Corporation is identified as the lender, and GMAC is servicing the loan.

20 Further, Defendants and Loan Consultant advised them that they were eligible for a Low  
21 Doc Loan. Unbeknownst to them at the time, Defendants and Loan Consultant used this low  
22 documentation requirement to fraudulently inflate their income; and in doing so, Defendants and  
23 Loan Consultant caused them to be placed into a loan whose payments they could not afford  
24 given their true, *un-inflated* monthly income. Defendants and Loan Consultant altered Mr. and  
25 Mrs. Gaston's loan application without their knowing consent or authorization as Loan  
26 Consultant completed Mr. and Mrs. Gaston's application without giving Mr. and Mrs. Gaston an  
27 opportunity to review the loan application.

28 Defendants and Loan Consultant also explicitly represented to Mr. and Mrs. Gaston that

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1 they could afford their loan and further represented that they could shoulder the additional  
2 financial burden of repaying their loan in consideration of their other existing debts. Defendants  
3 and Loan Consultant also represented to them that they could afford a \$2,675.27 monthly  
4 payment, despite their \$7,494.00 true monthly income (a “front-end” debt-to-income ratio,  
5 meaning a debt-to-income ratio, before any other debts are even considered, of over 36%).  
6 Defendants and Loan Consultant further represented to Mr. and Mrs. Gaston that they could rely  
7 on the assessment that they were “qualified” to mean that they could afford the loan. Because of  
8 Mr. and Mrs. Gaston’s lack of familiarity with how much debt a person can and should  
9 reasonably take on compared to their monthly income, and because Mr. and Mrs. Gaston  
10 reasonably relied on Defendants’ and Loan Consultant’s expertise that any payment they were  
11 “qualified” for would take into account what the maximum debt a person such as Mr. and Mrs.  
12 Gaston should be shouldering was, Mr. and Mrs. Gaston reasonably believed Defendants’ and  
13 Loan Consultant’s representations that they could afford their loan and its payments.

14 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
15 on behalf of Defendants were accurate and made in good faith. On or around October 3, 2006, an  
16 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
17 on Mr. and Mrs. Gaston’s home, which was fraudulently inflated to an intentionally overstated  
18 value. Defendants and Loan Consultant represented that, per appraisal, Mr. and Mrs. Gaston’s  
19 home was worth \$690,000.00 at the time they entered into their loan, and that such a valuation  
20 was a true and correct measure of their home’s worth. The current fair market value of Mr. and  
21 Mrs. Gaston’s home is approximately \$321,300.00. Mr. and Mrs. Gaston allege that the appraisal  
22 was artificially inflated, and that they have suffered damages in the amount of \$368,700.00  
23 (\$690,000.00-\$321,300.00) due to a substantial loss of equity in their home as a result of  
24 Defendants’ fraudulent inflation and other acts described herein.

25 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
26 reputable and complied with industry standard underwriting guidelines and were engaged in  
27 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
28 made in good faith; (3) Mr. and Mrs. Gaston could afford the loan; (4) they were “qualified” for

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1 their loan; and (5) "qualified" meant that they could afford their loan.

2 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
3 otherwise improperly disclosed to Mr. and Mrs. Gaston that: (1) Defendants and Loan  
4 Consultant knew that they could not and would not be able to afford their loan and that there was  
5 a very high probability that they would default and/or be foreclosed upon; (2) Defendants had an  
6 incentive to sell their loan, and did sell their loan at fraudulently inflated prices; (3) Defendants'  
7 and Loan Consultant's "qualification" process was for Defendants' own protection and not  
8 theirs; (4) that Defendants' and Loan Consultant's representations that they were "qualified" to  
9 pay their loan was not intended to communicate that they could actually "afford" the loan which  
10 they were being given; (5) Defendants had abandoned its conventional lending business, prudent  
11 lending standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
12 appraiser to over-value Mr. and Mrs. Gaston's home to require them to borrow more money with  
13 the knowledge that the true value of Mr. and Mrs. Gaston's home was insufficient to justify the  
14 amount of Mr. and Mrs. Gaston's loan; or (7) Defendants knew that due to its scheme of  
15 fraudulently manipulating and inflating property values throughout the State of California that  
16 the real estate market would crash and Mr. and Mrs. Gaston would lose substantial equity in their  
17 home.

18 Based on these misrepresentations and omissions, the material facts concerning Mr. and  
19 Mrs. Gaston's loan were concealed from them, and they decided to move forward with their  
20 loan. On October 31, 2006, Mr. and Mrs. Gaston signed the loan and Deed of Trust, before a  
21 notary. Had they known the truth however, Mr. and Mrs. Gaston would not have accepted the  
22 loan. As a result of Defendants' fraudulent acts described throughout this complaint Mr. and  
23 Mrs. Gaston have lost substantial equity in their home, have damaged or destroyed credit, and at  
24 the time Mr. and Mrs. Gaston entered into the loan their home was worth \$690,000.00, now their  
25 home is worth approximately \$321,300.00. Mr. and Mrs. Gaston did not discover any of these  
26 misrepresentations or omissions until after a consultation with legal counsel at Brookstone Law,  
27 and through a complete and thorough investigation of the loan documentation, and a discussion  
28 of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this

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1 complaint, were brought to light on or around March 26, 2011.

2 5. Plaintiff Mary Serrano ("Serrano") discussed obtaining a mortgage to purchase  
3 her home located at 3423 East White Chapel Court Unit B, Orange, CA 92869 and A.P.N. 939-  
4 21-315 with a Loan Consultant ("Loan Consultant") with Nationwide Lending Corporation, a  
5 correspondent of GMAC and Defendants herein (the "Defendants"), and authorized by  
6 Defendants to lend on its behalf, in or around January 2006. In the course of their discussions  
7 ranging from January 2006 until March 2006, Defendants steered her into a negatively amortized  
8 PayOption ARM in the amount of \$412,000.00 with an interest rate at 1.750% for a term of 40  
9 years. Little did Serrano know, however, the interest rate was never "fixed" but applied to only  
10 her first monthly payment and could adjust every 12 months thereafter. The amount of Serrano's  
11 minimum monthly payment was "fixed" for 12 months and could adjust every 12 months  
12 thereafter. When the amount of the minimum monthly payment is insufficient to cover the  
13 amount of interest due, then the amount of that deficiency is added onto the unpaid principal  
14 balance of her loan. The recast point of this loan is 115% of the original loan amount. Loan  
15 Consultant and Defendants also steered Serrano into a piggy-back loan in the amount of  
16 \$51,500.00 with the interest rate 11.57% for a term of 15 years. This loan was originated by  
17 GMAC and Defendants, the note and deed of trust identifies Nationwide Lending Corporation as  
18 the lender, and Aurora is currently servicing the loan.

19 Defendants represented to Serrano that her monthly payment would always be \$1,194.00  
20 Although the amount of Serrano's initial, minimum monthly payment was \$1,194.00,  
21 Defendants failed to clarify their partially true representations and advise Serrano : (1) how the  
22 interest rate on her loan was calculated; (2) that the initial minimum monthly payment of  
23 \$1,194.00 would not always be available; (3) that the initial minimum monthly payment would  
24 not be the permanent payment under the loan despite Defendants' affirmative representations to  
25 the contrary; (4) that by paying the initial minimum monthly payment she would be definitively  
26 deferring interest on her loan, increasing the principal balance of her loan every time she made  
27 the minimum monthly payment; (5) that by paying the minimum monthly payment the principal  
28 balance of her loan was certain to increase; or (6) her loan would be recast within a few years

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1 and she would be forced to pay considerably higher payments.

2 The disclosures in Serrano's loan documents discussing negative amortization only frame  
3 negative amortization as a mere **possibility** rather than a **certainty** when making the minimum  
4 payment. However, the reality was that by making the minimum payment, negative amortization  
5 was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending Disclosure  
6 Statement ("TILDS"), which set forth what appeared to be the *required* payment schedule, fails  
7 to disclose that making payments pursuant to the TILDS payment schedule *will* result in negative  
8 amortization. Serrano was not provided, before entering into the loans, with any other payment  
9 schedule or with any informed option to make payments different than those listed in the TILDS  
10 payment schedule. Had Defendants disclosed that by making the payment pursuant to the TILDS  
11 Serrano would be deferring interest, or had Defendants disclosed the payment amounts sufficient  
12 to avoid negative amortization from occurring, Serrano would not have entered into the loan.

13 **Defendants intentionally omitted a clear disclosure of the nature of Serrano's loan because**  
14 **giving a clear explanation of how the loan worked would have punctured the illusion of a**  
15 **low-payment, low interest rate loan.**

16 Defendants altered Serrano's loan application without her knowing consent or  
17 authorization as Defendants completed Serrano's application without giving Serrano an  
18 opportunity to review the loan application. Further, Defendants advised her that she was eligible  
19 for a Low Doc Loan. Unbeknownst to her at the time, Defendants used this low documentation  
20 requirement to fraudulently inflate her income and in doing so, Defendants caused her to be  
21 placed into a loan whose payments she could not afford given her true, *un-inflated* monthly  
22 income.

23 Defendants also explicitly represented to Serrano that she could afford her loan and  
24 further represented that she could shoulder the additional financial burden of repaying her loan in  
25 consideration of her other existing debts; yet failed to disclose that the fully amortized monthly  
26 payment on the loan was \$3,013.00. Given Serrano's true monthly income of \$3,112.00, this  
27 represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio, before any other  
28 debts are even considered, of over 96%- in excess of industry standard underwriting guidelines,

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1 and in excess of Defendants' own underwriting guidelines. Defendants further represented to  
2 Serrano that she could rely on the assessment that she was "qualified" to mean that she could  
3 afford the loan. Because of Serrano's lack of familiarity with how much debt a person can and  
4 should reasonably take on compared to her monthly income, and because Serrano reasonably  
5 relied on Defendants' expertise that any payment she was "qualified" for would take into account  
6 what the maximum debt a person such as Serrano should be shouldering was, Serrano reasonably  
7 believed Defendants' representations that she could afford her loan and its payments. Although  
8 Defendants represented to Serrano that she was "qualified" for her loan and could afford her loan  
9 and its monthly payments, Defendants misled Serrano into believing that her monthly payments  
10 would always only be \$1,194.00. Furthermore, at no point did Defendants clarify Serrano's false  
11 belief and advise her that \$1,194.00 would not be her permanent payment under the loan, or that  
12 every time she made a monthly payment in the amount of \$1,194.00, which is less than interest  
13 only, she would be deferring interest on her loan, increasing the principal balance of her loan.

14 In addition, Defendants represented that appraisals conducted by or on behalf of  
15 Defendants were accurate and made in good faith. On or around March 2006, an appraisal  
16 company under the direct control and supervision of Defendants conducted an appraisal on  
17 Serrano's home, which was fraudulently inflated to an intentionally overstated value. Defendants  
18 represented that, per appraisal, Serrano's home was worth \$430,000.00 at the time she entered  
19 into her loan, and that such a valuation was a true and correct measure of her home's worth. The  
20 current fair market value of Serrano's home is approximately \$301,100.00. Serrano alleges that  
21 the appraisal was artificially inflated, and that she has suffered damages in the amount of  
22 \$128,900.00 (\$430,000.00-\$301,100.00) due to a substantial loss of equity in her home as a  
23 result of Defendants' fraudulent inflation and other acts described herein.

24 Defendants also represented to Serrano that she would be able to refinance her loan at a  
25 later time. Serrano relied on this assurance in deciding to enter into the mortgage contract.  
26 However, Serrano has not been able to refinance her loan. Defendants also represented that it  
27 would modify Serrano's loan, and Serrano relied on this representation in deciding to enter into  
28 the loan. However, Serrano was unable to modify her loan.



1 Furthermore, Defendants represented that: (1) Defendants were reputable and complied  
2 with industry standard underwriting guidelines and were engaged in lending of the highest  
3 caliber; (2) property appraisals done by Defendants were accurate and made in good faith; (3)  
4 Serrano could afford the loan; (4) she was "qualified" for her loan; (5) "qualified" meant that she  
5 could afford her loan; (6) Defendants would modify her loan in the future; and (7) Defendants  
6 would refinance her loan in the future.

7 Moreover, Defendants withheld or incompletely, inaccurately or otherwise improperly  
8 disclosed to Serrano that: (1) Defendants knew that she could not and would not be able to afford  
9 her loan and that there was a very high probability that she would default and/or be foreclosed  
10 upon; (2) Defendants had an incentive to sell her loan, and did sell her loan at fraudulently  
11 inflated prices; (3) Defendants' "qualification" process was for Defendants' own protection and  
12 not hers; (4) that Defendants' representations that she was "qualified" to pay her loan was not  
13 intended to communicate that she could actually "afford" the loan which she was being given;  
14 (5) Defendants had abandoned its conventional lending business, prudent lending standards, and  
15 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
16 Serrano's home to require her to borrow more money with the knowledge that the true value of  
17 Serrano's home was insufficient to justify the amount of Serrano's loan; or (7) Defendants knew  
18 that due to its scheme of fraudulently manipulating and inflating property values throughout the  
19 State of California that the real estate market would crash and Serrano would lose substantial  
20 equity in her home.

21 Based on these misrepresentations and omissions, the material facts concerning Serrano's  
22 loan were concealed from her, and she decided to move forward with her loan. On March 22,  
23 2006, Serrano signed the loan and Deed of Trust, before a notary. Had she known the truth  
24 however, Serrano would not have accepted the loan. As a result of Defendants' fraudulent acts  
25 described throughout this complaint Serrano has lost substantial equity in her home, has  
26 damaged or destroyed credit, and at the time Serrano entered into the loan her home was worth  
27 \$430,000.00, now her home is worth approximately \$301,100.00. Serrano did not discover any  
28 of these misrepresentations or omissions until after a consultation with legal counsel at

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1 Brookstone Law, and through a complete and thorough investigation of the loan documentation,  
2 and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described  
3 throughout this complaint, were brought to light on or around February 1, 2011. (True and  
4 correct copy of the aforementioned documents are attached hereto as *Exhibit 4*).

5 6. Plaintiff Sarah Sebagh ("Sebagh") discussed refinancing an existing mortgage on  
6 their property located at 1233 N Flores Street #302, West Hollywood CA 90069 and APN 5554-  
7 025-162 with a Loan Consultant ("Loan Consultant"), a representative and authorized agent of  
8 SBMC, a correspondent of GMAC and Defendants herein (the "Defendants"), and authorized by  
9 Defendants to lend on its behalf, in or around March 2006. In the course of their discussions  
10 ranging from March 2006 until May 2006, Defendants and Loan Consultant steered her into a  
11 negatively amortized PayOption ARM in the amount of \$430,000.00 with an interest rate at  
12 1.000% for a term of 30 years. Little did Sebagh know, however, the interest rate was never  
13 "fixed" but applied to only their first monthly payment and could adjust every month thereafter.  
14 The maximum interest rate is 9.950%. The amount of Sebagh's minimum monthly payment was  
15 "fixed" for 12 months and could adjust every 12 months thereafter. When the amount of the  
16 minimum monthly payment is insufficient to cover the amount of interest due, then the amount  
17 of that deficiency is added onto the unpaid principal balance of their loan. The recast point of this  
18 loan is 110% of the original loan amount. In addition, Defendants and Loan Consultant  
19 recommended the loan, representing that the loan was a good loan. The loan was originated by  
20 GMAC, on the note and deed of trust SBMC was identified as the lender, and GMAC was the  
21 servicer of the loan.

22 Defendants and Loan Consultant represented to Sebagh that her monthly payment would  
23 always be \$1,383.05. Although the amount of Sebagh's initial minimum monthly payment was  
24 \$1,383.05, Defendants and Loan Consultant failed to clarify their partially true representations  
25 and advise Sebagh: (1) how the interest rate on her loan was calculated; (2) that the initial  
26 minimum monthly payment of \$1,383.05 would not always be available; (3) that the initial  
27 minimum monthly payment would not be the permanent payment under the loan despite  
28 Defendants' and Loan Consultant's affirmative representations to the contrary; (4) that by

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 paying the initial minimum monthly payment she would be definitively deferring interest on her  
2 loan, increasing the principal balance of her loan every time she made the minimum monthly  
3 payment; (5) that by paying the minimum monthly payment the principal balance of her loan was  
4 certain to increase; or (6) her loan would be recast within a few years and she would be forced to  
5 pay considerably higher payments.

6 The disclosures in Sebaugh's loan documents discussing negative amortization only frame  
7 negative amortization as a mere **possibility** rather than a **certainty** when making the minimum  
8 payment. However, the reality was that by making the minimum payment, negative amortization  
9 was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending Disclosure  
10 Statement ("TILDS"), which set forth what appeared to be the *required* payment schedule, fails  
11 to disclose that making payments pursuant to the TILDS payment schedule *will* result in negative  
12 amortization. Sebaugh was not provided, before entering into the loans, with any other payment  
13 schedule or with any informed option to make payments different than those listed in the TILDS  
14 payment schedule. Had Defendants disclosed that by making the payment pursuant to the TILDS  
15 Sebaugh would be deferring interest, or had Defendants disclosed the payment amounts sufficient  
16 to avoid negative amortization from occurring, Sebaugh would not have entered into the loan.  
17 **Defendants intentionally omitted a clear disclosure of the nature of Sebaugh's loan because**  
18 **giving a clear explanation of how the loan worked would have punctured the illusion of a**  
19 **low-payment, low interest rate loan.**

20 Defendants and Loan Consultant also explicitly represented to Sebaugh that she could  
21 afford her loan and further represented that she could shoulder the additional financial burden of  
22 repaying her loan in consideration of her other existing debts; yet failed to disclose that the fully  
23 amortized monthly payment on the loan was \$3,161.018. Given Sebaugh's true monthly income  
24 of \$2,610.00, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio,  
25 before any other debts are even considered, of over 121%- grossly in excess of industry standard  
26 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
27 and Loan Consultant further represented to Sebaugh that she could rely on the assessment that she  
28 was "qualified" to mean that she could afford the loan. Because of Sebaugh's lack of familiarity

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1 with how much debt a person can and should reasonably take on compared to her monthly  
2 income, and because Sebagh reasonably relied on Defendants' and Loan Consultant's expertise  
3 that any payment she was "qualified" for would take into account what the maximum debt a  
4 person such as Sebagh should be shouldering was, Sebagh reasonably believed Defendants' and  
5 Loan Consultant's representations that she could afford her loan and its payments.

6 Although Defendants and the Loan Consultant represented to Sebagh that she was  
7 "qualified" for her loan and could afford her loan and its monthly payments, Defendants and the  
8 Loan Consultant misled Sebagh into believing that her monthly payments would always only be  
9 \$1,383.05. Furthermore, at no point did Defendants or Loan Consultant clarify Sebagh's false  
10 belief and advise her that \$1,383.05 would not be her permanent payment under the loan, or that  
11 every time she made a monthly payment in the amount of \$1,383.05, which is less than interest  
12 only, she would be deferring interest on her loan, increasing the principal balance of her loan.

13 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
14 on behalf of Defendants were accurate and made in good faith. On or around April 26, 2006, an  
15 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
16 on Sebagh's home, which was fraudulently inflated to an intentionally overstated value. The  
17 current fair market value of Sebagh's home is approximately \$330,650.00. Sebagh alleges that  
18 the appraisal was artificially inflated, and that she has suffered damages due to a substantial loss  
19 of equity in her home as a result of Defendants' fraudulent inflation and other acts described  
20 herein.

21 Defendants and Loan Consultant also represented to Sebagh that she would be able to  
22 refinance her loan at a later time. Sebagh relied on this assurance in deciding to enter into the  
23 mortgage contract. However, Sebagh has not been able to refinance her loan because her income  
24 was insufficient to justify the size of the loan. Defendants and Loan Consultant also represented  
25 that it would modify Sebagh's loan, and Sebagh relied on this representation in deciding to enter  
26 into the loan. However, Sebagh were unable to modify her loan. After many unsuccessful  
27 applications for a loan modification, Sebagh received a three-month trial-payment plan in  
28 September 2011, hoping that Defendants would offer her a permanent loan modification at the

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 end of the trial period. Per Defendants' request Sebagh made three timely trial payments or even  
2 made them in advance of the due date. However, Defendants rejected Sebagh's loan  
3 modification despite Sebagh's compliance with every term of the modification offer. First,  
4 Defendants sent Sebagh an approval letter for a loan modification, then only two days of the  
5 receipt of the approval letter Defendants mailed her a conflicting denial letter stating that  
6 Sebagh's loan was not approved for a permanent loan modification. Defendants refused to  
7 permanently modify Sebagh's loan.

8 In addition, the foreclosure against Sebagh was wrongful. The assignment deed of trust  
9 (February 22, 2011) noted MERS as the party assigning the beneficiary interest in the property in  
10 its individual capacity. However, under California law MERS is only a nominee acting on behalf  
11 of the true beneficiary, and cannot initiate foreclosure in its own name. MERS can only act when  
12 acting in its nominal capacity. Here, MERS assigned the interest in the Deed of Trust from to  
13 Deutsch Bank Nation Trust Company in its own name, rendering the ADOT void. Accordingly,  
14 Deutsch Bank National Trust Company was never properly assigned the beneficial interest as a  
15 foreclosing beneficiary of the Deed. Therefore, any subsequent recorded documents based on  
16 that assignment in order to move forward with the foreclosure sale would be void as well.  
17 Moreover, the foreclosure against Sebagh was wrongful because at the time the NOD was  
18 recorded (April 22, 2011), the foreclosing trustee (Executive Trustee Services) did not have the  
19 legal authority to initiate the foreclosure because the foreclosing trustee was never properly  
20 substituted as trustee. The original trustee under the Deed of Trust (recorded May 31, 2006) was  
21 T.D Services.

22 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
23 reputable and complied with industry standard underwriting guidelines and were engaged in  
24 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
25 made in good faith; (3) Sebagh could afford the loan; (4) she was "qualified" for her loan; (5)  
26 "qualified" meant that she could afford their loan; (6) Defendants would modify her loan in the  
27 future; and (7) she would be able to refinance her loan in the future.

28 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 otherwise improperly disclosed to Sebagh that: (1) Defendants and Loan Consultant knew that  
2 she could not and would not be able to afford her loan and that there was a very high probability  
3 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
4 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
5 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
6 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
7 to communicate that she could actually "afford" the loan which she were being given; (5)  
8 Defendants had abandoned its conventional lending business, prudent lending standards, and  
9 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
10 Sebagh's home to require her to borrow more money with the knowledge that the true value of  
11 Sebagh's home was insufficient to justify the amount of Sebagh's loan; or (7) Defendants knew  
12 that due to its scheme of fraudulently manipulating and inflating property values throughout the  
13 State of California that the real estate market would crash and Sebagh would lose substantial  
14 equity in her home.

15 Based on these misrepresentations and omissions, the material facts concerning Sebagh's  
16 loan were concealed from her, and she decided to move forward with her loan. On May 10,  
17 2006, Sebagh signed the loan and Deed of Trust, before a notary. Had she known the truth  
18 however, Sebagh would not have accepted the loan. As a result of Defendants' fraudulent acts  
19 described throughout this complaint Sebagh has lost substantial equity in her home, has damaged  
20 or destroyed credit, and at the time Sebagh entered into the loan her home was worth  
21 substantially more than the approximately \$330,650.00 it is worth today. Mr. and Mrs. Sebagh  
22 did not discover any of these misrepresentations or omissions until after a consultation with legal  
23 counsel at Brookstone Law, and through a complete and thorough investigation of the loan  
24 documentation, and a discussion of the surrounding facts, the fraudulent acts of the Defendants,  
25 as described throughout this complaint, were brought to light on or around April 10, 2012. (True  
26 and correct copy of the aforementioned documents are attached hereto as *Exhibit 5*).

27 7. Plaintiffs Rick Albritton and Deborah Albritton ("Mr. and Mrs. Albritton")  
28 discussed refinancing an existing mortgage on their property located at 2030 West Windhaven

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1 Drive, Rialto, CA 92377 and A.P.N: 0239-711-22 with a Loan Consultant (“Loan Consultant”) a  
2 representative and authorized agent of GMAC and Defendants herein (the “Defendants”) in or  
3 around August 2006. In the course of their discussions ranging from August 2006 until October  
4 2006, Defendants and Loan Consultant steered them into an Adjustable Rate Mortgage in the  
5 amount of \$310,000.00 with the initial interest rate of 6.250% for a term of 30 years. Loan  
6 Consultant recommended the loan, representing that this is the best loan for Mr. and Mrs.  
7 Albritton. This loan was originated by GMAC, on the note and deed of trust GMAC was  
8 identified as the lender, and GMAC was the servicer of the loan.

9 Defendants and Loan Consultant altered Mr. and Mrs. Albritton’s loan application  
10 without their knowing consent or authorization as Loan Consultant completed Mr. and Mrs.  
11 Albritton’s application without giving Mr. and Mrs. Albritton an opportunity to review the loan  
12 application. Further, Defendants and Loan Consultant advised them that they were eligible for a  
13 Low Doc Loan. Unbeknownst to them at the time, Defendants and Loan Consultant used this  
14 low documentation requirement to fraudulently inflate their income ; and in doing so, Defendants  
15 and Loan Consultant caused them to be placed into a loan whose payments they could not afford  
16 given their true, *un-inflated* monthly income.

17 Defendants and Loan Consultant explicitly represented to Mr. and Mrs. Albritton that  
18 they could afford their loan; and further represented that they could shoulder the additional  
19 financial burden of repaying their loan in consideration of their other existing debts. Defendants  
20 and Loan Consultant also represented to them that they could afford a \$1,908.00 monthly  
21 payment, despite their \$3,643.00 true monthly income (a “front-end” debt-to-income ratio,  
22 meaning a debt-to-income ratio, before any other debts are even considered, of over 52%- in  
23 excess of industry standard underwriting guidelines, and in excess of Defendants’ own  
24 underwriting guidelines). Defendants and Loan Consultant further represented to Mr. and Mrs.  
25 Albritton that they could rely on the assessment that they were “qualified” to mean that they  
26 could afford the loan. Because of Mr. and Mrs. Albritton’s lack of familiarity with how much  
27 debt a person can and should reasonably take on compared to their monthly income, and because  
28 Mr. and Mrs. Albritton reasonably relied on Defendants’ and Loan Consultant’s expertise that

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1 any payment they were “qualified” for would take into account what the maximum debt a person  
2 such as Mr. and Mrs. Albritton should be shouldering was, Mr. and Mrs. Albritton reasonably  
3 believed Defendants’ and Loan Consultant’s representations that they could afford their loan and  
4 its payments.

5 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
6 on behalf of Defendants were accurate and made in good faith. On or around September 12,  
7 2006, an appraisal company under the direct control and supervision of Defendants conducted an  
8 appraisal on Mr. and Mrs. Albritton’s home, which was fraudulently inflated to \$420,000.00 - an  
9 intentionally overstated value. The current fair market value of Mr. and Mrs. Albritton’s home is  
10 approximately \$146,566.00. Mr. and Mrs. Albritton allege that the appraisal was artificially  
11 inflated, and that they have suffered damages in the amount of \$273,434.00 (\$420,000.00-  
12 \$146,566.00) due to a substantial loss of equity in their home as a result of Defendants’  
13 fraudulent inflation and other acts described herein.

14 Defendants and Loan Consultant also represented to Mr. and Mrs. Albritton that they  
15 would be able to refinance their loan at a later time. Mr. and Mrs. Albritton relied on this  
16 assurance in deciding to enter into the mortgage contract. However, Mr. and Mrs. Albritton have  
17 not been able to refinance their loan. Defendants and Loan Consultant also represented that it  
18 would modify Mr. and Mrs. Albritton’s loan, and Mr. and Mrs. Albritton relied on this  
19 representation in deciding to enter into the loan. In addition, Mr. and Mrs. Albritton were advised  
20 by a representative of Defendants, to stop making payments in order to be eligible for a  
21 modification. Mr. and Mrs. Albritton relied on Defendants’ and representative’s advice and  
22 stopped making their monthly payments causing them to fall even further behind. However, Mr.  
23 and Mrs. Albritton were unable to modify their loan.

24 The foreclosure against Rick Albritton and Deborah Albritton (collectively referred to as  
25 “Mr. and Mrs. Albritton”) was wrongful because the Substitution of Trustee (SOT) is ineffective.  
26 Under California law, MERS is only a nominee acting on behalf of the true beneficiary and  
27 cannot initiate foreclosure in its own name. MERS only has the power to act when acting in its  
28 nominal capacity. Here, MERS in its individual capacity purports to substitute Executive Trustee



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1 Services, LLC. The original trustee on the deed of trust was Executive Trustee Services,  
2 Incorporation. However, MERS cannot do so in its individual capacity, rendering the SOT  
3 without effect. Accordingly ETS, LLC was never properly substituted as the foreclosing trustee  
4 and thus unauthorized to conduct the trustee's sale. Under California law, a trustee's sale  
5 conducted by an unauthorized trustee as here, is void as a matter of law. Therefore, any  
6 subsequent foreclosure sale based on that SOT is also void ad initio.

7 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
8 reputable and complied with industry standard underwriting guidelines and were engaged in  
9 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
10 made in good faith; (3) Mr. and Mrs. Albritton could afford the loan ; (4) they were "qualified"  
11 for their loan; (5) "qualified" meant that they could afford their loan; (6) they would be able to  
12 modify their loan in the future; and (7) they would be able to refinance their loan in the future.

13 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
14 otherwise improperly disclosed to Mr. and Mrs. Albritton that: (1) Defendants and Loan  
15 Consultant knew that they could not and would not be able to afford their loan and that there was  
16 a very high probability that they would default and/or be foreclosed upon; (2) Defendants had an  
17 incentive to sell their loan, and did sell their loan at fraudulently inflated prices; (3) Defendants'  
18 and Loan Consultant's "qualification" process was for Defendants' own protection and not  
19 theirs; (4) that Defendants' and Loan Consultant's representations that they were "qualified" to  
20 pay their loan was not intended to communicate that they could actually "afford" the loan which  
21 they were being given; (5) Defendants had abandoned its conventional lending business, prudent  
22 lending standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
23 appraiser to over-value Mr. and Mrs. Albritton's home to require them to borrow more money  
24 with the knowledge that the true value of Mr. and Mrs. Albritton's home was insufficient to  
25 justify the amount of Mr. and Mrs. Albritton's loan; or (7) Defendants knew that due to its  
26 scheme of fraudulently manipulating and inflating property values throughout the State of  
27 California that the real estate market would crash and Mr. and Mrs. Albritton would lose  
28 substantial equity in their home.

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1 Based on these misrepresentations, the material facts concerning Mr. and Mrs. Albritton's  
2 loan were concealed from them, and they decided to move forward with their loan. On October  
3 2, 2006, Mr. and Mrs. Albritton signed the loan and Deed of Trust, before a notary. Had they  
4 known the truth however, Mr. and Mrs. Albritton would not have accepted the loan. As a result  
5 of Defendants' fraudulent acts described throughout this complaint Mr. and Mrs. Albritton have  
6 lost substantial equity in their home, have damaged or destroyed credit, and at the time Mr. and  
7 Mrs. Albritton entered into the loan their home was worth \$420,000.00, now their home is worth  
8 approximately \$146,566.00. Mr. and Mrs. Albritton did not discover any of these  
9 misrepresentations until after a consultation with legal counsel at Brookstone Law, and through a  
10 complete and thorough investigation of the loan documentation, and a discussion of the  
11 surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint,  
12 were brought to light on or around March 16, 2011. (True and correct copy of the  
13 aforementioned documents are attached hereto as *Exhibit 6*).

14 8. Plaintiff Veronica Grey ("Grey") discussed obtaining a mortgage to purchase her  
15 home located at 217 4th Avenue #2, Venice, CA 90291 and A.P.N.: 4286-001-048 with a Loan  
16 Consultant ("Loan Consultant") with Green Point Mortgage Funding, Inc., a correspondent of  
17 GMAC and Defendants herein ("the Defendants"), and authorized by Defendants to lend on its  
18 behalf, in or around April 2006. In the course of their discussions ranging from April 2006 until  
19 June 2006, Defendants and Loan Consultant steered her into a negatively amortized PayOption  
20 ARM in the amount of \$736,000.00 with an interest rate at 2.000% for a term of 40 years. Little  
21 did Grey know, however, the interest rate was never "fixed" but applied to only her first monthly  
22 payment and could adjust every 12 months thereafter. The maximum interest rate is 12.000%.  
23 The amount of Grey's minimum monthly payment was "fixed" for 12 months and could adjust  
24 every 12 months thereafter. When the amount of the minimum monthly payment is insufficient  
25 to cover the amount of interest due, then the amount of that deficiency is added onto the unpaid  
26 principal balance of her loan. The recast point of this loan is 125% of the original loan amount.  
27 The loan was originated by GMAC. On the note and Deed of Trust Green Point Mortgage  
28 Funding, Inc. is identified as the lender, and the loan is being serviced by GMAC.

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1 Defendants and Loan Consultant represented to Grey that her monthly payment would  
2 always be \$2,228.00. Although the amount of Grey's initial, minimum monthly payment was  
3 \$2,228.00, Defendants and Loan Consultant failed to clarify their partially true representations  
4 and advise Grey: (1) how the interest rate on her loan was calculated; (2) that the initial  
5 minimum monthly payment of \$2,228.00 would not always be available; (3) that the initial  
6 minimum monthly payment would not be the permanent payment under the loan despite  
7 Defendants' and Loan Consultant's affirmative representations to the contrary; (4) that by  
8 paying the initial minimum monthly payment she would be definitively deferring interest on her  
9 loan, increasing the principal balance of her loan every time she made the minimum monthly  
10 payment; (5) that by paying the minimum monthly payment the principal balance of her loan was  
11 certain to increase; or (6) her loan would be recast within a few years and she would be forced to  
12 pay considerably higher payments.

13 The disclosures in Grey's loan documents discussing negative amortization only frame  
14 negative amortization as a mere **possibility** rather than a **certainty** when making the minimum  
15 payment. However, the reality was that by making the minimum payment, negative amortization  
16 was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending Disclosure  
17 Statement ("TILDS"), which set forth what appeared to be the *required* payment schedule, fails  
18 to disclose that making payments pursuant to the TILDS payment schedule *will* result in negative  
19 amortization. Grey was not provided, before entering into the loans, with any other payment  
20 schedule or with any informed option to make payments different than those listed in the TILDS  
21 payment schedule. Had Defendants disclosed that by making the payment pursuant to the TILDS  
22 Grey would be deferring interest, or had Defendants disclosed the payment amounts sufficient to  
23 avoid negative amortization from occurring, Grey would not have entered into the loan.

24 **Defendants intentionally omitted a clear disclosure of the nature of Grey's loan because**  
25 **giving a clear explanation of how the loan worked would have punctured the illusion of a**  
26 **low-payment, low interest rate loan.**

27 Defendants and Loan Consultant altered Grey's loan application without her knowing  
28 consent or authorization as Loan Consultant completed Grey's application without giving Grey

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 an opportunity to review the loan application. Further, Defendants and Loan Consultant advised  
2 her that she was eligible for a Low Doc Loan. Unbeknownst to her at the time, Defendants and  
3 Loan Consultant used this low documentation requirement to fraudulently inflate her income,  
4 and in doing so, Defendants and Loan Consultant caused her to be placed into a loan whose  
5 payments she could not afford given her true, *un-inflated* monthly income.

6 Defendants and Loan Consultant also explicitly represented to Grey that she could afford  
7 her loan and further represented that she could shoulder the additional financial burden of  
8 repaying her loan in consideration of her other existing debts; yet failed to disclose that the fully  
9 amortized monthly payment on the loan was \$5,460.54. Given Grey's true monthly income of  
10 \$10,000.00, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio,  
11 before any other debts are even considered, of over 54%- in excess of industry standard  
12 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
13 and Loan Consultant further represented to Grey that she could rely on the assessment that she  
14 was "qualified" to mean that she could afford the loan. Because of Grey's lack of familiarity  
15 with how much debt a person can and should reasonably take on compared to her monthly  
16 income, and because Grey reasonably relied on Defendants' and Loan Consultant's expertise that  
17 any payment she was "qualified" for would take into account what the maximum debt a person  
18 such as Grey should be shouldering was, Grey reasonably believed Defendants' and Loan  
19 Consultant's representations that she could afford her loan and its payments. Although  
20 Defendants and the Loan Consultant represented to Grey that she was "qualified" for her loan  
21 and could afford her loan and its monthly payments, Defendants and the Loan Consultant misled  
22 Grey into believing that her monthly payments would always only be \$2,228.00. Furthermore, at  
23 no point did Defendants or Loan Consultant clarify Grey's false belief and advise her that  
24 \$2,228.00 would not be her permanent payment under the loan, or that every time she made a  
25 monthly payment in the amount of \$2,228.00, which is less than interest only, she would be  
26 deferring interest on her loan, increasing the principal balance of her loan.

27 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
28 on behalf of Defendants were accurate and made in good faith. On or around May 2006, an

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1 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
2 on Grey's home, which was fraudulently inflated to an intentionally overstated value.  
3 Defendants and Loan Consultant represented that, per appraisal, Grey's home was worth  
4 \$800,000.00 at the time she entered into her loan, and that such a valuation was a true and  
5 correct measure of her home's worth. The current fair market value of Grey's home is  
6 approximately \$467,074.00. Grey alleges that the appraisal was artificially inflated, and that she  
7 has suffered damages in the amount of \$332,926.00 (\$800,000.00-\$467,074.00) due to a  
8 substantial loss of equity in her home as a result of Defendants' fraudulent inflation and other  
9 acts described herein.

10 Defendants and Loan Consultant also represented to Grey that she would be able to  
11 refinance her loan at a later time. Grey relied on this assurance in deciding to enter into the  
12 mortgage contract. However, Grey has not been able to refinance her loan. Defendants and Loan  
13 Consultant also represented that it would modify Grey's loan, and Grey relied on this  
14 representation in deciding to enter into the loan.

15 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
16 reputable and complied with industry standard underwriting guidelines and were engaged in  
17 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
18 made in good faith; (3) Grey could afford the loan ; (4) she was "qualified" for her loan; (5)  
19 "qualified" meant that she could afford her loan; (6) she would be able to modify her loan; and  
20 (7) she would be able to refinance her loan.

21 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
22 otherwise improperly disclosed to Grey that: (1) Defendants and Loan Consultant knew that she  
23 could not and would not be able to afford her loan and that there was a very high probability that  
24 she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her loan,  
25 and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
26 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
27 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
28 to communicate that she could actually "afford" the loan which she was being given; (5)

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 Defendants had abandoned its conventional lending business, prudent lending standards, and  
2 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
3 Grey's home to require her to borrow more money with the knowledge that the true value of  
4 Grey's home was insufficient to justify the amount of Grey's loan; or (7) Defendants knew that  
5 due to its scheme of fraudulently manipulating and inflating property values throughout the State  
6 of California that the real estate market would crash and Grey would lose substantial equity in  
7 her home.

8 Based on these misrepresentations and omissions, the material facts concerning Grey's  
9 loan were concealed from her, and she decided to move forward with her loan. On June 16,  
10 2006, Grey signed the loan and Deed of Trust, before a notary. Had she known the truth  
11 however, Grey would not have accepted the loan. As a result of Defendants' fraudulent acts  
12 described throughout this complaint Grey has lost substantial equity in her home, has damaged  
13 or destroyed credit, and at the time Grey entered into the loan her home was worth \$800,000.00,  
14 now her home is worth approximately \$467,074.00. Grey did not discover any of these  
15 misrepresentations or omissions until after a consultation with legal counsel at Brookstone Law,  
16 and through a complete and thorough investigation of the loan documentation, and a discussion  
17 of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this  
18 complaint, were brought to light on or around February 12, 2011. (True and correct copy of the  
19 aforementioned documents are attached hereto as *Exhibit 7*).

20 9. Plaintiffs Joselito Mella and Brenda Mella ("Mr. and Mrs. Mella") discussed  
21 refinancing an existing mortgage on their home located at 6 Caltrop Way, Ladera Ranch, CA  
22 92694 and A.P.N.:741-362-22 with a loan consultant (the "Loan Consultant"), and representative  
23 and authorized agent of Defendants herein (the "Defendants") in or around November 2005. In  
24 the course of their discussions ranging from November 2005 until January 2005, Defendants and  
25 Loan Consultant steered them into a loan of which the Defendants and Loan Consultant  
26 concealed and inaccurately, incompletely or otherwise improperly disclosed the material terms  
27 and information concerning the loan. This loan was originated by GMAC, on the note and deed  
28 of trust Wescom Credit Union is identified as the lender.

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1 Defendants and Loan Consultant explicitly represented to Mr. and Mrs. Mella that they  
2 could afford their loan; and further represented that they could shoulder the additional financial  
3 burden of repaying their loan in consideration of their other existing debts. Loan Consultant and  
4 Defendants further represented to Mr. and Mrs. Mella that they could rely on the assessment that  
5 they were “qualified” to mean that they could afford the loan. Because of Mr. and Mrs. Mella’s  
6 lack of familiarity with how much debt a person can and should reasonably take on compared to  
7 his/her monthly income, and because Mr. and Mrs. Mella reasonably relied on Defendants’ and  
8 Loan Consultant’s expertise that any payment they were “qualified” for would take into account  
9 what the maximum debt a person such as Mr. and Mrs. Mella should be shouldering was, Mr.  
10 and Mrs. Mella reasonably believed Defendants’ and Loan Consultant’s representations that they  
11 could afford their loan and its payments.

12 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
13 on behalf of Defendants were accurate and made in good faith. An appraisal company under the  
14 direct control and supervision of Defendants conducted an appraisal on Mr. and Mrs. Mella’s  
15 home, which was fraudulently inflated to an intentionally overstated value. Mr. and Mrs. Mella  
16 allege that the appraisal was artificially inflated, and that they have suffered damages due to a  
17 substantial loss of equity in their home as a result of Defendants’ fraudulent inflation and other  
18 acts described herein.

19 Loan Consultant and Defendants also represented to Mr. and Mrs. Mella that they would  
20 be able to refinance their loan at a later time. Mr. and Mrs. Mella relied on this assurance in  
21 deciding to enter into the mortgage contract. However, Mr. and Mrs. Mella have not been able  
22 to refinance their loan. Loan Consultant and Defendants also represented that it would modify  
23 Mr. and Mrs. Mella’s loan, and Mr. and Mrs. Mella relied on this representation in deciding to  
24 enter into the loan. In addition, Mr. and Mrs. Mella were advised by a representative and  
25 authorized agent of Defendants to stop making payments in order to be eligible for a  
26 modification. Mr. and Mrs. Mella relied on the Defendants’ and the Defendants representative  
27 and authorized agents’ advice and stopped making their monthly payments causing them to fall  
28 even further behind. However, Mr. and Mrs. Mella were unable to modify their loan.

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1 Furthermore, Loan Consultant and Defendants represented that: (1) Defendants were  
2 reputable and complied with industry standard underwriting guidelines and were engaged in  
3 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
4 made in good faith; (3) Mr. and Mrs. Mella could afford the loan; (4) They were “qualified” for  
5 their loan; (5) “qualified” meant that they could afford their loan; (6) They would be able to  
6 modify their loan in the future; and (7) They would be able to refinance their loan in the future.

7 Moreover, Loan Consultant and Defendants withheld or incompletely, inaccurately or  
8 otherwise improperly disclosed to Mr. and Mrs. Mella that: (1) Loan Consultant and Defendants  
9 knew that they could not and would not be able to afford their loan and that there was a very high  
10 probability that they would default and/or be foreclosed upon; (2) Defendants had an incentive to  
11 sell their loan, and did sell their loan at fraudulently inflated prices; (3) Loan Consultant’s and  
12 Defendants’ “qualification” process was for Defendants’ own protection and not theirs; (4) That  
13 Loan Consultant’s and Defendants’ representations that they were “qualified” to pay their loan  
14 was not intended to communicate that they could actually “afford” the loan which they was  
15 being given; (5) Defendants had abandoned its conventional lending business, prudent lending  
16 standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
17 appraiser to over-value Mr. and Mrs. Mella’s home to require them to borrow more money with  
18 the knowledge that the true value of Mr. and Mrs. Mella’s home was insufficient to justify the  
19 amount of Mr. and Mrs. Mella’s loan; or (7) Defendants knew that due to its scheme of  
20 fraudulently manipulating and inflating property values throughout the State of California that  
21 the real estate market would crash and Mr. and Mrs. Mella would lose substantial equity in their  
22 home.

23 Based on these misrepresentations and omissions, the material facts concerning Mr. and  
24 Mrs. Mella’s loan were concealed from them, and they decided to move forward with their loan.  
25 On January 26, 2006, Mr. and Mrs. Mella signed the loan and Deed of Trust, before a notary.  
26 Had they known the truth however, Mr. and Mrs. Mella would not have accepted the loan. As a  
27 result of the Defendants’ fraudulent acts described throughout this complaint Mr. and Mrs. Mella  
28 have lost substantial equity in their home, have damaged or destroyed credit, and at the time Mr.



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1 and Mrs. Mella entered into the loan their home was worth substantially more than its current  
2 fair market value. Mr. and Mrs. Mella did not discover any of these misrepresentations or  
3 omissions until after a consultation with legal counsel at Brookstone Law, and through a  
4 complete and thorough investigation of the loan documentation, and a discussion of the  
5 surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint,  
6 were brought to light on or around April 6, 2011.

7 10. Plaintiffs Michael Man and July Lim ("Man and Lim") discussed refinancing an  
8 existing mortgage on their property located at 15417 Roper Avenue, Norwalk, CA 90650 and  
9 A.P.N.:8082-028-020 with a Loan Consultant ("Loan Consultant"), a representative and  
10 authorized agent of SCME Mortgage Bankers, a correspondent of GMAC and Defendants herein  
11 (the "Defendants"), and authorized by Defendants to lend on its behalf, in or around November  
12 2006. In the course of their discussions ranging from November 2006 until January 2007,  
13 Defendants and Loan Consultant steered them into a fixed rate mortgage in the amount of  
14 \$500,000.00 with an interest rate at 6.75% for a term of 30 years. This loan was originated by  
15 GMAC, on the note and deed of trust SCME is identified as the lender, and GMAC is currently  
16 servicing the loan.

17 Defendants and Loan Consultant advised them that they were eligible for a Low Doc  
18 Loan. Unbeknownst to them at the time, Defendants and Loan Consultant used this low  
19 documentation requirement to fraudulently inflate their income by \$6,990.00, a factor of 117%;  
20 and in doing so, Defendants and Loan Consultant caused them to be placed into a loan whose  
21 payments they could not afford given their true, *un-inflated* monthly income. Defendants and  
22 Loan Consultant also fraudulently overstated Man and Lim's assets. Defendants and Loan  
23 Consultant altered Man and Lim's loan application without their knowing consent or  
24 authorization as Loan Consultant completed Man and Lim's application without giving Man and  
25 Lim an opportunity to review the loan application.

26 Defendants and Loan Consultant also explicitly represented to Man and Lim that they  
27 could afford their loan and further represented that they could shoulder the additional financial  
28 burden of repaying their loan in consideration of their other existing debts. Defendants and Loan

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1 Consultant also represented to them that they could afford a \$3,242.99 monthly payment, despite  
2 their \$6,000.00 true monthly income (a “front-end” debt-to-income ratio, meaning a debt-to-  
3 income ratio, before any other debts are even considered, of over 54% - in excess of industry  
4 standard underwriting guidelines, and in excess of Defendants’ own underwriting guidelines).  
5 Defendants and Loan Consultant further represented to Man and Lim that they could rely on the  
6 assessment that they were “qualified” to mean that they could afford the loan. Because of Man  
7 and Lim’s lack of familiarity with how much debt a person can and should reasonably take on  
8 compared to their monthly income, and because Man and Lim reasonably relied on Defendants’  
9 and Loan Consultant’s expertise that any payment they were “qualified” for would take into  
10 account what the maximum debt a person such as Man and Lim should be shouldering was, Man  
11 and Lim reasonably believed Defendants’ and Loan Consultant’s representations that they could  
12 afford their loan and its payments.

13 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
14 on behalf of Defendants were accurate and made in good faith. On or around December 12,  
15 2007, an appraisal company under the direct control and supervision of Defendants conducted an  
16 appraisal on Man and Lim’s home, which was fraudulently inflated to an intentionally  
17 overstated. Man and Lim’s loan documentation indicates that their home was worth \$650,000.00  
18 at the time they entered into their loan. The current fair market value of Man and Lim’s home is  
19 approximately \$272,646.00. Man and Lim allege that the appraisal was artificially inflated, and  
20 that they have suffered damages in the amount of \$377,354.00 (\$650,000.00-\$272,646.00) due to  
21 a substantial loss of equity in their home as a result of Defendants’ fraudulent inflation and other  
22 acts described herein.

23 Due to the economic crash caused by Defendants’ fraudulent acts described throughout  
24 the complaint, Man and Lim suffered from financial hardship because their income substantially  
25 decreased. Defendants and Loan Consultant also represented to Man and Lim that they would be  
26 able to refinance their loan at a later time. Man and Lim relied on this assurance in deciding to  
27 enter into the mortgage contract. However, Man and Lim have not been able to refinance their  
28 loan because their home value has dropped by 50% since they entered into the loan.

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1 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
2 reputable and complied with industry standard underwriting guidelines and were engaged in  
3 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
4 made in good faith; (3) Man and Lim could afford the loan; (4) they were “qualified” for their  
5 loan; (5) “qualified” meant that they could afford their loan; and (6) Defendants would refinance  
6 their loan in the future.

7 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
8 otherwise improperly disclosed to Man and Lim that: (1) Defendants and Loan Consultant knew  
9 that they could not and would not be able to afford their loan and that there was a very high  
10 probability that they would default and/or be foreclosed upon; (2) Defendants had an incentive to  
11 sell their loan, and did sell their loan at fraudulently inflated prices; (3) Defendants’ and Loan  
12 Consultant’s “qualification” process was for Defendants’ own protection and not theirs; (4) that  
13 Defendants’ and Loan Consultant’s representations that they were “qualified” to pay their loan  
14 was not intended to communicate that they could actually “afford” the loan which they were  
15 being given; (5) Defendants had abandoned its conventional lending business, prudent lending  
16 standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
17 appraiser to over-value Man and Lim’s home to require them to borrow more money with the  
18 knowledge that the true value of Man and Lim’s home was insufficient to justify the amount of  
19 Man and Lim’s loan; or (7) Defendants knew that due to its scheme of fraudulently manipulating  
20 and inflating property values throughout the State of California that the real estate market would  
21 crash and Man and Lim would lose substantial equity in their home.

22 Based on these misrepresentations and omissions, the material facts concerning Man and  
23 Lim’s loan were concealed from them, and they decided to move forward with their loan. On  
24 January 2, 2007, Man and Lim signed the loan and Deed of Trust, before a notary. Had they  
25 known the truth however, Man and Lim would not have accepted the loan. As a result of  
26 Defendants’ fraudulent acts described throughout this complaint Man and Lim have lost  
27 substantial equity in their home, have damaged or destroyed credit, and at the time Man and Lim  
28 entered into the loan their home was worth \$650,000.00, now their home is worth approximately

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1 \$272,646.00. Man and Lim did not discover any of these misrepresentations or omissions until  
2 after a consultation with legal counsel at Brookstone Law, and through a complete and thorough  
3 investigation of the loan documentation, and a discussion of the surrounding facts, the fraudulent  
4 acts of the Defendants, as described throughout this complaint, were brought to light on or  
5 around April 8, 2011. (True and correct copy of the aforementioned documents are attached  
6 hereto as *Exhibit 8*).

7 11. Plaintiffs David Cruz and Yesenia Cruz ("Mr. and Mrs. Cruz") discussed  
8 obtaining a mortgage to purchase their home located at 48159 Sol De Lind, Coachella, CA  
9 92236 and A.P.N.: 612-433-009 with a Loan Consultant ("Loan Consultant"), Equi-First  
10 Corporation, a correspondent of GMAC Mortgage, LLC, Defendants herein ("the Defendants"),  
11 and authorized by Defendants to lend on its behalf, in or around April 2005. In the course of their  
12 discussions ranging from April 2005 until June 2005, Defendants and Loan Consultant advised  
13 them to enter into a fixed rate loan in the amount of \$232,500.00 with the interest rate of 6.500%  
14 for a term of 30 years. This loan was originated by GMAC, on the note and deed of trust Equi-  
15 First Corporation is identified as the lender, and the loan is currently being serviced by GMAC.

16 Further, Defendants and Loan Consultant advised them that they were eligible for a Low  
17 Doc Loan. Unbeknownst to them at the time, Defendants and Loan Consultant used this low  
18 documentation requirement to fraudulently inflate their income by \$1,000.00, a factor of 27%;  
19 and in doing so, Defendants and Loan Consultant caused them to be placed into a loan whose  
20 payments they could not afford given their true, *un-inflated* monthly income. Defendants and  
21 Loan Consultant altered Mr. and Mrs. Cruz's loan application without their knowing consent or  
22 authorization as Loan Consultant completed Mr. and Mrs. Cruz's application without giving Mr.  
23 and Mrs. Cruz an opportunity to review the loan application.

24 Defendants and Loan Consultant explicitly represented to Mr. and Mrs. Cruz that they  
25 could afford their loan; and further represented that they could shoulder the additional financial  
26 burden of repaying their loan in consideration of their other existing debts. Defendants and Loan  
27 Consultant also represented to them that they could afford a \$1,469.00 monthly payment, despite  
28 their \$3,700.00 true monthly income (a "front-end" debt-to-income ratio, meaning a debt-to-

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 income ratio, before any other debts are even considered, of over 39%- in excess of industry  
2 standard underwriting guidelines, and in excess of Defendants' own underwriting guidelines).  
3 Defendants and Loan Consultant further represented to Mr. and Mrs. Cruz that they could rely on  
4 the assessment that they were "qualified" to mean that they could afford the loan. Because of Mr.  
5 and Mrs. Cruz's lack of familiarity with how much debt a person can and should reasonably take  
6 on compared to their monthly income, and because Mr. and Mrs. Cruz reasonably relied on  
7 Defendants' and Loan Consultant's expertise that any payment they were "qualified" for would  
8 take into account what the maximum debt a person such as Mr. and Mrs. Cruz should be  
9 shouldering was, Mr. and Mrs. Cruz reasonably believed Defendants' and Loan Consultant's  
10 representations that they could afford their loan and its payments.

11 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
12 on behalf of Defendants were accurate and made in good faith. On or around May 27, 2005, an  
13 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
14 on Mr. and Mrs. Cruz's home, which was fraudulently inflated to an intentionally overstated  
15 value. Defendants and Loan Consultant represented that, per appraisal, Mr. and Mrs. Cruz's  
16 home was worth \$310,000.00 at the time they entered into their loan, and that such a valuation  
17 was a true and correct measure of their home's worth. The current fair market value of Mr. and  
18 Mrs. Cruz's home is approximately \$118,579.00. Mr. and Mrs. Cruz allege that the appraisal was  
19 artificially inflated, and that they have suffered damages in the amount of \$191,421.00  
20 (\$310,000.00-\$118,579.00) due to a substantial loss of equity in their home as a result of  
21 Defendants' fraudulent inflation and other acts described herein.

22 Defendants and Loan Consultant also represented to Mr. and Mrs. Cruz that they would  
23 be able to refinance their loan at a later time. Mr. and Mrs. Cruz relied on this assurance in  
24 deciding to enter into the mortgage contract. However, Mr. and Mrs. Cruz have not been able to  
25 refinance their loan. Defendants and Loan Consultant also represented that it would modify Mr.  
26 and Mrs. Cruz's loan, and Mr. and Mrs. Cruz relied on this representation in deciding to enter  
27 into the loan. In addition, Mr. and Mrs. Cruz were advised by a representative of Defendants, to  
28 stop making payments in order to be eligible for a modification. Mr. and Mrs. Cruz relied on

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1 Defendants' and representative's advice and stopped making their monthly payments causing  
2 them to fall even further behind. However, Mr. and Mrs. Cruz were unable to modify their loan.

3 The foreclosure against Cruz is wrongful. Under California law MERS is only a nominee  
4 acting on behalf of the true beneficiary, and cannot initiate foreclosure in its own name. MERS  
5 only has the power to act when acting in its nominal capacity. Here, MERS in its individual  
6 capacity purports to substitute Executive Trustee Services, LLC dba ETS Services, LLC –  
7 however MERS cannot do so in its individual capacity, rendering their substitution of trustee  
8 without effect. Accordingly, ETS was never properly substituted as trustee and thus  
9 unauthorized to conduct the trustee's sale. Under California law, a trustee's sale conducted by an  
10 unauthorized trustee as here, is void as a matter of law.

11 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
12 reputable and complied with industry standard underwriting guidelines and were engaged in  
13 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
14 made in good faith; (3) Mr. and Mrs. Cruz could afford the loan; (4) they were "qualified" for  
15 their loan; (5) "qualified" meant that they could afford their loan; (6) they would be able to  
16 modify their loan; and (7) they would be able to refinance their loan.

17 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
18 otherwise improperly disclosed to Mr. and Mrs. Cruz that: (1) Defendants and Loan Consultant  
19 knew that they could not and would not be able to afford their loan and that there was a very high  
20 probability that they would default and/or be foreclosed upon; (2) Defendants had an incentive to  
21 sell their loan, and did sell their loan at fraudulently inflated prices; (3) Defendants' and Loan  
22 Consultant's "qualification" process was for Defendants' own protection and not theirs; (4) that  
23 Defendants' and Loan Consultant's representations that they were "qualified" to pay their loan  
24 was not intended to communicate that they could actually "afford" the loan which they were  
25 being given; (5) Defendants had abandoned its conventional lending business, prudent lending  
26 standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
27 appraiser to over-value Mr. and Mrs. Cruz's home to require them to borrow more money with  
28 the knowledge that the true value of Mr. and Mrs. Cruz's home was insufficient to justify the

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1 amount of Mr. and Mrs. Cruz's loan; or (7) Defendants knew that due to its scheme of  
2 fraudulently manipulating and inflating property values throughout the State of California that  
3 the real estate market would crash and Mr. and Mrs. Cruz would lose substantial equity in their  
4 home.

5 Based on these misrepresentations, the material facts concerning Mr. and Mrs. Cruz's  
6 loan were concealed from them, and they decided to move forward with their loan. On June 17,  
7 2005, Mr. and Mrs. Cruz signed the loan and Deed of Trust, before a notary. Had they known the  
8 truth however, Mr. and Mrs. Cruz would not have accepted the loan. As a result of Defendants'  
9 fraudulent acts described throughout this complaint Mr. and Mrs. Cruz have lost substantial  
10 equity in their home, has damaged or destroyed credit, and at the time Mr. and Mrs. Cruz entered  
11 into the loan their home was worth \$310,000.00, now their home is worth approximately  
12 \$118,579.00. Mr. and Mrs. Cruz did not discover any of these misrepresentations until after a  
13 consultation with legal counsel at Brookstone Law, and through a complete and thorough  
14 investigation of the loan documentation, and a discussion of the surrounding facts, the fraudulent  
15 acts of the Defendants, as described throughout this complaint, were brought to light on or  
16 around May 11, 2011. (True and correct copy of the aforementioned documents are attached  
17 hereto as *Exhibit 9*).

18 12. Plaintiff Gregory Buck ("Buck") discussed obtaining a mortgage on his home  
19 located at 68 Toulon Avenue, Foothill Ranch, CA 92610 and A.P.N.: 601-215-04 with a loan  
20 consultant (the "Loan Consultant"), and representative and authorized agent of Defendants  
21 herein (the "Defendants") in or around June 2006. In the course of their discussions ranging from  
22 June 2006 until August 2006, Defendants and Loan Consultant steered him into a loan, of which  
23 the Defendants and Loan Consultant concealed and inaccurately, incompletely or otherwise  
24 improperly disclosed the material terms and information concerning the loan to him. This loan  
25 was originated by GMAC, on the note and deed of trust Provident Funding Associates is  
26 identified as the lender, and GMAC is currently servicing the loan.

27 Defendants and Loan Consultant explicitly represented to Buck that he could afford his  
28 loan; and further represented that he could shoulder the additional financial burden of repaying

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1 his loan in consideration of his other existing debts. Loan Consultant and Defendants further  
2 represented to Buck that he could rely on the assessment that he was “qualified” to mean that he  
3 could afford the loan. Because of Buck’s lack of familiarity with how much debt a person can  
4 and should reasonably take on compared to his/her monthly income, and because Buck  
5 reasonably relied on Defendants’ and Loan Consultant’s expertise that any payment he was  
6 “qualified” for would take into account what the maximum debt a person such as Buck should be  
7 shouldering was, Buck reasonably believed Defendants’ and Loan Consultant’s representations  
8 that he could afford his loan and its payments.

9 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
10 on behalf of Defendants were accurate and made in good faith. An appraisal company under the  
11 direct control and supervision of Defendants conducted an appraisal on Buck’s home, which was  
12 fraudulently inflated to an intentionally overstated value. Buck alleges that the appraisal was  
13 artificially inflated, and that he has suffered damages due to a substantial loss of equity in his  
14 home as a result of Defendants’ fraudulent inflation and other acts described herein.

15 Loan Consultant and Defendants also represented to Buck that he would be able to  
16 refinance his loan at a later time. Buck relied on this assurance in deciding to enter into the  
17 mortgage contract. However, Buck has not been able to refinance his loan. Loan Consultant and  
18 Defendants also represented that it would modify Buck’s loan, and Buck relied on this  
19 representation in deciding to enter into the loan. In addition, Buck was advised by a  
20 representative and authorized agent of Defendants to stop making payments in order to be  
21 eligible for a modification. Buck relied on Defendants’ and the Defendants representative and  
22 authorized agent’s advice and stopped making his monthly payments causing him to fall even  
23 further behind. However, Buck was unable to modify his loan.

24 Furthermore, Loan Consultant and Defendants represented that: (1) Defendants were  
25 reputable and complied with industry standard underwriting guidelines and were engaged in  
26 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
27 made in good faith; (3) Buck could afford the loan; (4) He was “qualified” for his loan; (5)  
28 “qualified” meant that he could afford his loan; (6) He would be able to modify his loan in the



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1 future; and (7) He would be able to refinance his loan in the future.

2 Moreover, Loan Consultant and Defendants withheld or incompletely, inaccurately or  
3 otherwise improperly disclosed to Buck that: (1) Loan Consultant and Defendants knew that he  
4 could not and would not be able to afford his loan and that there was a very high probability that  
5 he would default and/or be foreclosed upon; (2) Defendants had an incentive to sell his loan, and  
6 did sell his loan at fraudulently inflated prices; (3) Loan Consultant's and Defendants'  
7 "qualification" process was for Defendants' own protection and not his; (4) That Loan  
8 Consultant's and Defendants' representations that he was "qualified" to pay his loan was not  
9 intended to communicate that he could actually "afford" the loan which he was being given; (5)  
10 Defendants had abandoned its conventional lending business, prudent lending standards, and  
11 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
12 Buck's home to require him to borrow more money with the knowledge that the true value of  
13 Buck's home was insufficient to justify the amount of Buck's loan; or (7) Defendants knew that  
14 due to its scheme of fraudulently manipulating and inflating property values throughout the State  
15 of California that the real estate market would crash and Buck would lose substantial equity in  
16 his home.

17 Based on these misrepresentations and omissions, the material facts concerning Buck's  
18 loan were concealed from him, and he decided to move forward with his loan. On August 23,  
19 2006, Buck signed the loan and Deed of Trust, before a notary. Had he known the truth however,  
20 Buck would not have accepted the loan. As a result of the Defendants' fraudulent acts described  
21 throughout this complaint Buck has lost substantial equity in his home, has damaged or  
22 destroyed credit, and at the time Buck entered into the loan his home was worth substantially  
23 more than its current fair market value. Buck did not discover any of these misrepresentations or  
24 omissions until after a consultation with legal counsel at Brookstone Law, and through a  
25 complete and thorough investigation of the loan documentation, and a discussion of the  
26 surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint,  
27 were brought to light on or around May 19, 2011.

28 13. Plaintiff Cristina Palbicke ("Palbicke") discussed refinancing an existing

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1 mortgage on her property located at 27949 Harwood Drive, Santa Clarita, CA, 91350 and APN  
2 3244-065-009 with a loan consultant (the "Loan Consultant"), a representative and authorized  
3 agent of GMAC and Defendants herein (the "Defendants"), in or around February 2007. In the  
4 course of their discussions ranging from February 2007 until April 2007, Defendants and Loan  
5 Consultant advised her to enter into fixed rate loan in the amount of \$346,000.00, with an  
6 interest rate of 5.125%, for a term of 15 years. This loan was originated by GMAC, on the note  
7 and deed of trust GMAC is identified as the lender, and GMAC was the servicer of the loan.

8 Defendants and Loan Consultant explicitly represented to Palbicke that she could afford  
9 her loan and further represented that she could shoulder the additional financial burden of  
10 repaying her loan in consideration of her other existing debts. Defendants and Loan Consultant  
11 also represented to her that she could afford a \$3,097.31 monthly payment. Defendants and Loan  
12 Consultant further represented to Palbicke that she could rely on the assessment that she was  
13 "qualified" to mean that she could afford the loan. Because of Palbicke's lack of familiarity with  
14 how much debt a person can and should reasonably take on compared to her monthly income,  
15 and because Palbicke reasonably relied on Defendants' and Loan Consultant's expertise that any  
16 payment they were "qualified" for would take into account what the maximum debt a person  
17 such as Palbicke should be shouldering was, Palbicke reasonably believed Defendants' and Loan  
18 Consultant's representations that she could afford her loan and its payments.

19 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
20 on behalf of Defendants were accurate and made in good faith. On or around March 2007, an  
21 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
22 on Palbicke's home, which was fraudulently inflated to an intentionally overstated value.  
23 Defendants and Loan Consultant represented that, per appraisal, Palbicke's home was worth  
24 \$485,000.00 at the time she entered into their loan, and that such a valuation was a true and  
25 correct measure of their home's worth. The current fair market value of Palbicke's home is  
26 approximately \$314,036.00. Palbicke allege that the appraisal was artificially inflated, and that  
27 she has suffered damages in the amount of \$170,964.00 (\$485,000.00-\$314,036.00) due to a  
28 substantial loss of equity in her home as a result of Defendants' fraudulent inflation and other

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1 acts described herein.

2 Defendants and Loan Consultant also represented to Palbicke that she would be able to  
3 refinance her loan at a later time. Palbicke relied on this assurance in deciding to enter into the  
4 mortgage contract. However, Palbicke has not been able to refinance her loan because she has  
5 been told that her home does not contain enough equity. Defendants and Loan Consultant also  
6 represented that it would modify Palbicke's loan, and Palbicke relied on this representation in  
7 deciding to enter into the loan. However, Palbicke were unable to modify her loan.

8 The foreclosure against Palbicke was wrongful because the ADOT (recorded February  
9 28, 2011) notes MERS as the party assigning the beneficial interest in the property in its  
10 individual capacity to the foreclosing party (GMAC). However, under California law MERS is  
11 only a nominee acting on behalf of the true beneficiary, and cannot initiate foreclosure in its own  
12 name. MERS can only act when acting in its nominal capacity. Here, MERS assigned the interest  
13 in the Deed of Trust to GMAC in its own name, rendering its ADOT void. Accordingly, GMAC  
14 was never properly assigned the beneficiary interest as a foreclosing beneficiary of the Deed.  
15 Therefore, any subsequent recorded documents based on that assignment in order to move  
16 forward with the foreclosure sale would be ineffective as well. Therefore, since the assignment  
17 of deed of trust from MERS to the foreclosing party (GMAC) was void, it will render any  
18 subsequent transactions based on that assignment void ab initio.

19 In addition, the foreclosure against Palbicke was wrongful because at the time the  
20 Trustee's deed was recorded (August 11, 2011), the foreclosing trustee (Executive Trustee  
21 Services, LLC) did not have the legal authority to initiate the foreclosure because the foreclosing  
22 trustee was never properly substituted as trustee. The original trustee under the Deed of Trust  
23 (recorded April 4, 2007) was Executive Trustee Services, Incorporation.

24 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
25 reputable and complied with industry standard underwriting guidelines and were engaged in  
26 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
27 made in good faith; (3) Palbicke could afford the loan; (4) they were "qualified" for their loan;  
28 (5) "qualified" meant that they could afford their loan; (6) they would be able to modify her

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 loan; and (7) they would be able to refinance her loan.

2 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
3 otherwise improperly disclosed to Palbicke that: (1) Defendants and Loan Consultant knew that  
4 she could not and would not be able to afford her loan and that there was a very high probability  
5 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
6 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
7 "qualification" process was for Defendants' own protection and not theirs; (4) that Defendants'  
8 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
9 to communicate that she could actually "afford" the loan which they were being given; (5)  
10 Defendants had abandoned its conventional lending business, prudent lending standards, and  
11 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
12 Palbicke home to require them to borrow more money with the knowledge that the true value of  
13 Palbicke's home was insufficient to justify the amount of Palbicke's loan; or (7) Defendants  
14 knew that due to its scheme of fraudulently manipulating and inflating property values  
15 throughout the State of California that the real estate market would crash and Palbicke would  
16 lose substantial equity in their home.

17 Based on these misrepresentations, the material facts concerning Palbicke's loan was  
18 concealed from her, and she decided to move forward with her loan. On April 4, 2007, Palbicke  
19 signed the loan and Deed of Trust, before a notary. Had she known the truth however, Palbicke  
20 would not have accepted the loan. As a result of Defendants' fraudulent acts described  
21 throughout this complaint, Palbicke has lost substantial equity in her home, has damaged or  
22 destroyed credit, and at the time Palbicke entered into the loan her home was worth \$485,000.00,  
23 now her home is worth approximately \$314,036.00. Palbicke did not discover any of these  
24 misrepresentations until after a consultation with legal counsel at Brookstone Law, and through a  
25 complete and thorough investigation of the loan documentation, and a discussion of the  
26 surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint,  
27 were brought to light on or around April 7, 2011. (True and correct copy of the aforementioned  
28 documents are attached hereto as *Exhibit 10*).

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1           14.     Plaintiffs Khalil Subat and Manija Subat (“collectively referred to as “Mr. and  
2 Mrs. Subat”) discussed refinancing an existing mortgage on their property located at 7330  
3 Cerritos Avenue, Stanton, CA 90680 and A.P.N.:079-541-55 with a Loan Consultant (“Loan  
4 Consultant”), a representative and authorized agent of Greenpoint Mortgage Funding, a  
5 correspondent of GMAC and Defendants herein (the “Defendants”) and authorized by  
6 Defendants to lend on its behalf, in or around April 2006. In the course of their discussions  
7 ranging from April 2006 until June 2006, Defendants and Loan Consultant steered them into an  
8 adjustable rate mortgage in the amount of \$650,000.00 with an interest rate at 3.000% for a term  
9 of 30 years. Little did Mr. and Mrs. Subat know, however, their loan was a negatively amortized  
10 PayOption ARM. Mr. and Mrs. Subat was not advised that the interest rate was never “fixed” but  
11 applied to only their first monthly payment and could adjust every month thereafter. The  
12 maximum interest rate is 12%. The amount of Mr. and Mrs. Subat’s minimum monthly payment  
13 was “fixed” for 12 months and could adjust every 12 months thereafter. When the amount of the  
14 minimum monthly payment is insufficient to cover the amount of interest due, then the amount  
15 of that deficiency is added onto the unpaid principal balance of their loan. The recast point of this  
16 loan is 110% of the original loan amount. In addition, Loan Consultant steered them into an  
17 ARM “piggy-back” loan in the amount of \$100,000.00 for a term of 15 years. These loans were  
18 originated by GMAC, on the note and deed of trust Greenpoint Mortgage Funding is identified as  
19 the lender, and GMAC is currently servicing the loan.

20           Defendants and Loan Consultant represented to Mr. and Mrs. Subat that their monthly  
21 payment would always be \$2,740.43. Although the amount of Mr. and Mrs. Subat’s initial  
22 minimum monthly payment was \$2,740.43. Defendants and Loan Consultant failed to clarify  
23 their partially true representations and advise Mr. and Mrs. Subat: (1) how the interest rate on  
24 their loan was calculated; (2) that the initial minimum monthly payment of \$2,740.43 would not  
25 always be available; (3) that the initial minimum monthly payment would not be the permanent  
26 payment under the loan despite Defendants’ and Loan Consultant’s affirmative representations  
27 to the contrary; (4) that by paying the initial minimum monthly payment they would be  
28 definitively deferring interest on their loan, increasing the principal balance of their loan every

APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM

1 time they made the minimum monthly payment; (5) that by paying the minimum monthly  
2 payment the principal balance of their loan was certain to increase; or (6) their loan would be  
3 recast within a few years and they would be forced to pay considerably higher payments.

4 The disclosures in Mr. and Mrs. Subat's loan documents discussing negative amortization  
5 only frame negative amortization as a mere **possibility** rather than a **certainty** when making the  
6 minimum payment. However, the reality was that by making the minimum payment, negative  
7 amortization was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending  
8 Disclosure Statement ("TILDS"), which set forth what appeared to be the *required* payment  
9 schedule, fails to disclose that making payments pursuant to the TILDS payment schedule *will*  
10 result in negative amortization. Mr. and Mrs. Subat were not provided, before entering into the  
11 loans, with any other payment schedule or with any informed option to make payments different  
12 than those listed in the TILDS payment schedule. Had Defendants disclosed that by making the  
13 payment pursuant to the TILDS Mr. and Mrs. Subat would be deferring interest, or had  
14 Defendants disclosed the payment amounts sufficient to avoid negative amortization from  
15 occurring, Mr. and Mrs. Subat would not have entered into the loan. **Defendants intentionally**  
16 **omitted a clear disclosure of the nature of Mr. and Mrs. Subat's loan because giving a clear**  
17 **explanation of how the loan worked would have punctured the illusion of a low-payment,**  
18 **low interest rate loan.**

19 Further, Defendants and Loan Consultant advised them that they were eligible for a Low  
20 Doc Loan. Unbeknownst to them at the time, Defendants and Loan Consultant used this low  
21 documentation requirement to fraudulently inflate their income by \$6,620.00, a factor of 69%;  
22 and in doing so, Defendants and Loan Consultant caused them to be placed into a loan whose  
23 payments they could not afford given their true, *un-inflated* monthly income. Defendants and  
24 Loan Consultant altered Mr. and Mrs. Subat's loan application without their knowing consent or  
25 authorization as Loan Consultant completed Mr. and Mrs. Subat's application without giving Mr.  
26 and Mrs. Subat an opportunity to review the loan application.

27 Defendants and Loan Consultant also explicitly represented to Mr. and Mrs. Subat that  
28 they could afford their loan and further represented that they could shoulder the additional

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 financial burden of repaying their loan in consideration of their other existing debts; yet failed to  
2 disclose that the fully amortized monthly payment on the loan was \$5,627.94 for both the first  
3 loan and the piggy-back loan. Given Mr. and Mrs. Subat's true monthly income of \$9,630.00 this  
4 represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio, before any other  
5 debts are even considered, of over 58% - in excess of industry standard underwriting guidelines,  
6 and in excess of Defendants' own underwriting guidelines. Defendants and Loan Consultant  
7 further represented to Mr. and Mrs. Subat that they could rely on the assessment that they were  
8 "qualified" to mean that they could afford the loan. Because of Mr. and Mrs. Subat's lack of  
9 familiarity with how much debt a person can and should reasonably take on compared to their  
10 monthly income, and because Mr. and Mrs. Subat reasonably relied on Defendants' and Loan  
11 Consultant's expertise that any payment they were "qualified" for would take into account what  
12 the maximum debt a person such as Mr. and Mrs. Subat should be shouldering was, Mr. and Mrs.  
13 Subat reasonably believed Defendants' and Loan Consultant's representations that they could  
14 afford their loan and its payments.

15 Although Defendants and the Loan Consultant represented to Mr. and Mrs. Subat that  
16 they were "qualified" for their loan and could afford their loan and its monthly payments,  
17 Defendants and the Loan Consultant misled Mr. and Mrs. Subat into believing that their monthly  
18 payments would always only be \$2,740.43. Furthermore, at no point did Defendants or Loan  
19 Consultant clarify Mr. and Mrs. Subat's false belief and advise them that \$2,740.43 would not be  
20 their permanent payment under the loan, or that every time they made a monthly payment in the  
21 amount of \$2,740.43, which is less than interest only, they would be deferring interest on their  
22 loan, increasing the principal balance of their loan.

23 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
24 on behalf of Defendants were accurate and made in good faith. On June 7, 2006, an appraisal  
25 company under the direct control and supervision of Defendants conducted an appraisal on Mr.  
26 and Mrs. Subat's home, which was fraudulently inflated to \$1,000,000.00 - an intentionally  
27 overstated value. The current fair market value of Mr. and Mrs. Subat's home is approximately  
28 \$620,000.00. Mr. and Mrs. Subat allege that the appraisal was artificially inflated, and that they

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 have suffered damages in the amount of \$380,000.00 (\$1,000,000.00-\$620,000.00) due to a  
2 substantial loss of equity in their home as a result of Defendants' fraudulent inflation and other  
3 acts described herein.

4 Due to the economic crash caused by Defendants' fraudulent acts described throughout  
5 the complaint, Mr. and Mrs. Subat suffered from financial hardship that they were struggling to  
6 make the mortgage payments. At the time of entering into the loan, Defendants and Loan  
7 Consultant represented to Mr. and Mrs. Subat that they would be able to refinance their loan at a  
8 later time. Mr. and Mrs. Subat relied on this assurance in deciding to enter into the mortgage  
9 contract. However, Mr. and Mrs. Subat have not been able to refinance their loan. Mr. and Mrs.  
10 Subat also sought to modify their loan with Defendants to lower the mortgage payments.  
11 Although Mr. and Mrs. Subat's loan was modified, the modification is active only for a limited  
12 time. When the modification expires, Mr. and Mrs. Subat's monthly payment will climb to the  
13 point that the loan is unaffordable to Mr. and Mrs. Subat.

14 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
15 reputable and complied with industry standard underwriting guidelines and were engaged in  
16 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
17 made in good faith; (3) Mr. and Mrs. Subat could afford the loan; (4) they were "qualified" for  
18 their loan; (5) "qualified" meant that they could afford their loan; and (6) they would be able to  
19 refinance their loan in the future.

20 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
21 otherwise improperly disclosed to Mr. and Mrs. Subat that: (1) Defendants and Loan Consultant  
22 knew that they could not and would not be able to afford their loan and that there was a very high  
23 probability that they would default and/or be foreclosed upon; (2) Defendants had an incentive to  
24 sell their loan, and did sell their loan at fraudulently inflated prices; (3) Defendants' and Loan  
25 Consultant's "qualification" process was for Defendants' own protection and not theirs; (4) that  
26 Defendants' and Loan Consultant's representations that they were "qualified" to pay their loan  
27 was not intended to communicate that they could actually "afford" the loan which they were  
28 being given; (5) Defendants had abandoned its conventional lending business, prudent lending



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1 standards, and industry standard underwriting guidelines; (6) Defendants influenced the  
2 appraiser to over-value Mr. and Mrs. Subat's home to require them to borrow more money with  
3 the knowledge that the true value of Mr. and Mrs. Subat's home was insufficient to justify the  
4 amount of Mr. and Mrs. Subat's loan; or (7) Defendants knew that due to its scheme of  
5 fraudulently manipulating and inflating property values throughout the State of California that  
6 the real estate market would crash and Mr. and Mrs. Subat would lose substantial equity in their  
7 home.

8 Based on these misrepresentations and omissions, the material facts concerning Mr. and  
9 Mrs. Subat's loan were concealed from them, and they decided to move forward with their loan.  
10 On June 26, 2006, Mr. and Mrs. Subat signed the loan and Deed of Trust, before a notary. Had  
11 they known the truth however, Mr. and Mrs. Subat would not have accepted the loan. As a result  
12 of Defendants' fraudulent acts described throughout this complaint Mr. and Mrs. Subat have lost  
13 substantial equity in their home, have damaged or destroyed credit, and at the time Mr. and Mrs.  
14 Subat entered into the loan their home was worth \$1,000,000.00, now their home is worth  
15 approximately \$620,000.00. Mr. and Mrs. Subat did not discover any of these misrepresentations  
16 or omissions until after a consultation with legal counsel at Brookstone Law, and through a  
17 complete and thorough investigation of the loan documentation, and a discussion of the  
18 surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint,  
19 were brought to light on or around August 1, 2011. (True and correct copy of the  
20 aforementioned documents are attached hereto as *Exhibit 11*).

21 15. Plaintiff Genevie Cabang ("Cabang") discussed refinancing an existing mortgage  
22 on her property located at 37915 52nd Street East, Palmdale, CA 92252 and A.P.N.: with a loan  
23 consultant (the "Loan Consultant"), a representative and authorized agent of Homecomings  
24 Financial Services, LLC, a correspondent of GMAC Mortgage (herein "Defendants"), and  
25 authorized by Defendants to lend on its behalf, in or around August 2007. In the course of their  
26 discussions ranging from August 2007 until October 2007, Defendants and Loan Consultant  
27 advised her to enter into a fixed rate loan in the amount of \$416,500.00, with an interest rate of  
28 7.875%, for a term of 30 years. This loan was originated by GMAC, on the note and deed of trust

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1 Homecomings Financial Services, LLC is identified as the lender, and this loan is currently being  
2 serviced by GMAC.

3 Further, Defendants and Loan Consultant advised her she was eligible for a Low Doc  
4 Loan. Unbeknownst to her at the time, Defendants and Loan Consultant used this low  
5 documentation requirement to fraudulently inflate her income by \$2,024.00, a factor of 35% ;  
6 and in doing so, Defendants and Loan Consultant caused her to be placed into a loan whose  
7 payments she could not afford given her true, *un-inflated* monthly income. Defendants and Loan  
8 Consultant altered Cabang's loan application without her knowing consent or authorization as  
9 Loan Consultant completed Cabang's application without giving Cabang an opportunity to  
10 review the loan application.

11 Defendants and Loan Consultant explicitly represented to Cabang that she could afford  
12 her loan; and further represented that she could shoulder the additional financial burden of  
13 repaying her loan in consideration of her other existing debts. Defendants and Loan Consultant  
14 also represented to her that she could afford a \$3,443.35 monthly payment, despite her \$5,876.00  
15 true monthly income (a "front-end" debt-to-income ratio, meaning a debt-to-income ratio, before  
16 any other debts are even considered, of over 59%- in excess of industry standard underwriting  
17 guidelines, and in excess of Defendants' own underwriting guidelines). Defendants and Loan  
18 Consultant further represented to Cabang that she could rely on the assessment that she was  
19 "qualified" to mean that he could afford the loan. Because of Cabang's lack of familiarity with  
20 how much debt a person can and should reasonably take on compared to her monthly income,  
21 and because Cabang reasonably relied on Defendants' and Loan Consultant's expertise that any  
22 payment she was "qualified" for would take into account what the maximum debt a person such  
23 as Cabang should be shouldering was, Cabang reasonably believed Defendants' and Loan  
24 Consultant's representations that she could afford her loan and its payments.

25 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
26 on behalf of Defendants were accurate and made in good faith. On or around September 2007, an  
27 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
28 on Cabang's home, which was fraudulently inflated to a grossly and intentionally overstated

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1 value. Defendants and Loan Consultant represented that, per appraisal, Cabang's home was  
2 worth \$416,000.00 at the time she entered into their loan, and that such a valuation was a true  
3 and correct measure of her home's worth. The current fair market value of Cabang's home is  
4 approximately \$147,000.00. Cabang alleges that the appraisal was artificially inflated and that  
5 she has suffered damages in the amount of \$269,900.00 (\$416,000.00-\$147,000.00) due to a  
6 substantial loss of equity in her home as a result of Defendants' fraudulent inflation and other  
7 acts described herein.

8 Defendants and Loan Consultant also represented to Cabang that she would be able to  
9 refinance her loan at a later time. Cabang relied on this assurance in deciding to enter into the  
10 mortgage contract. However, Cabang has not been able to refinance her loan because she has  
11 been told that her home does not contain enough equity. Defendants and Loan Consultant also  
12 represented that it would modify Cabang's loan, and Cabang relied on this representation in  
13 deciding to enter into the loan. However, Cabang was unable to modify her loan.

14 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
15 reputable and complied with industry standard underwriting guidelines and were engaged in  
16 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
17 made in good faith; (3) Cabang could afford the loan ; (4) she was "qualified" for her loan; (5)  
18 "qualified" meant that she could afford her loan; (6) Defendants would modify her loan in the  
19 future; and (7) she would be able to refinance her loan in the future.

20 At no point was it revealed to Cabang that her mortgage payment included a Private  
21 Mortgage Insurance ("PMI"). After being told her new payment of \$3,019.91 would be her  
22 payment after combining both of her previous loans through refinancing, Defendants and Loan  
23 Consultant failed to represent that in order to combine both loans, a PMI rate of \$423.33 was  
24 added each month to her payment without her knowing. Cabang alleges that this increase caused  
25 her new, refinanced mortgage payment to be unaffordable.

26 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
27 otherwise improperly disclosed to Cabang that: (1) Defendants and Loan Consultant knew that  
28 they could not and would not be able to afford her loan and that there was a very high probability

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1 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
2 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
3 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
4 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
5 to communicate that she could actually "afford" the loan which she was being given; (5)  
6 Defendants had abandoned its conventional lending business, prudent lending standards, and  
7 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
8 Cabang's home to require her to borrow more money with the knowledge that the true value of  
9 Cabang's home was insufficient to justify the amount of Cabang's loan; or (7) Defendants knew  
10 that due to its scheme of fraudulently manipulating and inflating property values throughout the  
11 State of California that the real estate market would crash and Cabang would lose substantial  
12 equity in her home.

13 Based on these misrepresentations, the material facts concerning Cabang's loan were  
14 concealed from her, and she decided to move forward with her loan. On October 11, 2007,  
15 Cabang signed the loan and Deed of Trust, before a notary. Had she known the truth however,  
16 Cabang would not have accepted the loan. As a result of Defendants' fraudulent acts described  
17 throughout this complaint Cabang has lost substantial equity in her home, has damaged or  
18 destroyed credit, and at the time Cabang entered into the loan her home was worth \$416,000.00,  
19 now her home is worth approximately \$147,000.00. Cabang did not discover any of these  
20 misrepresentations until after a consultation with legal counsel at Brookstone Law, and through a  
21 complete and thorough investigation of the loan documentation, and a discussion of the  
22 surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint,  
23 were brought to light on or around September 6, 2011. (True and correct copy of the  
24 aforementioned documents are attached hereto as *Exhibit 12*).

25 16. Plaintiff Julio Gonzalez ("Gonzalez") discussed obtaining a mortgage on his  
26 home located at 13552 Abana Street, Cerritos, CA 90703 and A.P.N.: 7006-027-004 with a loan  
27 consultant (the "Loan Consultant"), and representative and authorized agent of GMAC herein  
28 (the "Defendants") in or around April 2005. In the course of their discussions ranging from April

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1 2005 until June 2005, Defendants and Loan Consultant steered him into a loan, of which the  
2 Defendants and Loan Consultant concealed and inaccurately, incompletely or otherwise  
3 improperly disclosed the material terms and information concerning the loan to him. This loan  
4 was originated by E-loan, Inc., on the note and deed of trust GMAC is identified as the lender,  
5 and GMAC is currently servicing the loan.

6 Defendants and Loan Consultant explicitly represented to Gonzalez that he could afford  
7 his loan; and further represented that he could shoulder the additional financial burden of  
8 repaying his loan in consideration of his other existing debts. Loan Consultant and Defendants  
9 further represented to Gonzalez that he could rely on the assessment that he was "qualified" to  
10 mean that he could afford the loan. Because of Gonzalez's lack of familiarity with how much  
11 debt a person can and should reasonably take on compared to his/her monthly income, and  
12 because Gonzalez reasonably relied on Defendants' and Loan Consultant's expertise that any  
13 payment he was "qualified" for would take into account what the maximum debt a person such  
14 as Gonzalez should be shouldering was, Gonzalez reasonably believed Defendants' and Loan  
15 Consultant's representations that he could afford his loan and its payments.

16 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
17 on behalf of Defendants were accurate and made in good faith. An appraisal company under the  
18 direct control and supervision of Defendants conducted an appraisal on Gonzalez's home, which  
19 was fraudulently inflated to an intentionally overstated value. Gonzalez alleges that the appraisal  
20 was artificially inflated, and that he has suffered damages due to a substantial loss of equity in  
21 his home as a result of Defendants' fraudulent inflation and other acts described herein.

22 Loan Consultant and Defendants also represented to Gonzalez that he would be able to  
23 refinance his loan at a later time. Gonzalez relied on this assurance in deciding to enter into the  
24 mortgage contract. However, Gonzalez has not been able to refinance his loan. Loan Consultant  
25 and Defendants also represented that it would modify Gonzalez's loan, and Gonzalez relied on  
26 this representation in deciding to enter into the loan. In addition, Gonzalez was advised by a  
27 representative and authorized agent of Defendants to stop making payments in order to be  
28 eligible for a modification. Gonzalez relied on Defendants' and the Defendants representative

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1 and authorized agent's advice and stopped making his monthly payments causing him to fall  
2 even further behind. However, Gonzalez was unable to modify his loan.

3 Furthermore, Loan Consultant and Defendants represented that: (1) Defendants were  
4 reputable and complied with industry standard underwriting guidelines and were engaged in  
5 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
6 made in good faith; (3) Gonzalez could afford the loan; (4) He was "qualified" for his loan; (5)  
7 "qualified" meant that he could afford his loan; (6) He would be able to modify his loan in the  
8 future; and (7) He would be able to refinance his loan in the future.

9 Moreover, Loan Consultant and Defendants withheld or incompletely, inaccurately or  
10 otherwise improperly disclosed to Gonzalez that: (1) Loan Consultant and Defendants knew that  
11 he could not and would not be able to afford his loan and that there was a very high probability  
12 that he would default and/or be foreclosed upon; (2) Defendants had an incentive to sell his loan,  
13 and did sell his loan at fraudulently inflated prices; (3) Loan Consultant's and Defendants'  
14 "qualification" process was for Defendants' own protection and not his; (4) That Loan  
15 Consultant's and Defendants' representations that he was "qualified" to pay his loan was not  
16 intended to communicate that he could actually "afford" the loan which he was being given; (5)  
17 Defendants had abandoned its conventional lending business, prudent lending standards, and  
18 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
19 Gonzalez's home to require him to borrow more money with the knowledge that the true value  
20 of Gonzalez's home was insufficient to justify the amount of Gonzalez's loan; or (7)  
21 Defendants knew that due to its scheme of fraudulently manipulating and inflating property  
22 values throughout the State of California that the real estate market would crash and Gonzalez  
23 would lose substantial equity in his home.

24 Based on these misrepresentations and omissions, the material facts concerning  
25 Gonzalez's loan were concealed from him, and he decided to move forward with his loan. On  
26 June 22, 2005, Gonzalez signed the loan and Deed of Trust, before a notary. Had he known the  
27 truth however, Gonzalez would not have accepted the loan. As a result of the Defendants'  
28 fraudulent acts described throughout this complaint Gonzalez has lost substantial equity in his

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1 home, has damaged or destroyed credit, and at the time Gonzalez entered into the loan his home  
2 was worth substantially more than its current fair market value. Gonzalez did not discover any  
3 of these misrepresentations or omissions until after a consultation with legal counsel at  
4 Brookstone Law, and through a complete and thorough investigation of the loan documentation,  
5 and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described  
6 throughout this complaint, were brought to light on or around October 10, 2011.

7 17. Plaintiff Lisa Simonyi ("Simonyi") discussed refinancing an existing mortgage on  
8 her property located at 14442 Rancho Del Prado Trail, San Diego, CA 92127 and APN 303-230-  
9 25-00 with a loan consultant (the "Loan Consultant") with Plaza Home Mortgage, Inc., a  
10 correspondent of GMAC and the Defendants (the "Defendants"), and authorized by Defendants  
11 to lend on its behalf, in or around November 2006. In the course of their discussions ranging  
12 from November 2006 until January 2007, Defendants and Loan Consultant steered her into a  
13 negatively amortized PayOption ARM in the amount of \$1,500,000.00 with an interest rate at  
14 3.750% for a term of 30 years. Little did Simonyi know, however, the disclosed interest rate was  
15 never "fixed" but applied to only the first five years of her loan and could adjust every six  
16 months thereafter. The maximum interest rate is 11.750%. The amount of Simonyi's minimum  
17 monthly payment was "fixed" for 12 months and could adjust every 12 months thereafter. When  
18 the amount of the minimum monthly payment is insufficient to cover the amount of interest due,  
19 then the amount of that deficiency is added onto the unpaid principal balance of her loan. The  
20 recast point of this loan is 115% of the original loan amount. This loan was originated by GMAC  
21 and Defendants, on the note and deed of trust Plaza Home Mortgage is identified as the lender,  
22 and GMAC is currently servicing this loan.

23 Defendants and Loan Consultant represented to Simonyi that her monthly payment would  
24 always be \$4,687.50. Although the amount of Simonyi's initial, disclosed minimum monthly  
25 payment was \$4,687.50, Defendants and Loan Consultant failed to clarify their partially true  
26 representations and advise Simonyi: (1) how the interest rate on her loan was calculated; (2) that  
27 the initial, disclosed minimum monthly payment of \$4,687.50 would not always be available; (3)  
28 that the initial, disclosed minimum monthly payment would not be the permanent payment under

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1 the loan despite Defendants' and Loan Consultant's affirmative representations to the contrary;  
2 (4) that by paying the initial, disclosed minimum monthly payment she would be definitively  
3 deferring interest on her loan, increasing the principal balance of her loan every time she made  
4 the minimum monthly payment; (5) that by paying the minimum monthly payment the principal  
5 balance of her loan was certain to increase; or (6) her loan would be recast within a few years  
6 and she would be forced to pay considerably higher payments.

7 The disclosures in Simonyi's loan documents discussing negative amortization only  
8 frame negative amortization as a mere **possibility** rather than a **certainty** when making the  
9 minimum payment. However, the reality was that by making the minimum payment, negative  
10 amortization was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending  
11 Disclosure Statement ("TILDS"), which set forth what appeared to be the *required* payment  
12 schedule, fails to disclose that making payments pursuant to the TILDS payment schedule *will*  
13 result in negative amortization. Simonyi was not provided, before entering into the loans, with  
14 any other payment schedule or with any informed option to make payments different than those  
15 listed in the TILDS payment schedule. Had Defendants disclosed that by making the payment  
16 pursuant to the TILDS Simonyi would be deferring interest, or had Defendants disclosed the  
17 payment amounts sufficient to avoid negative amortization from occurring, Simonyi would not  
18 have entered into the loan. **Defendants intentionally omitted a clear disclosure of the nature**  
19 **of Simonyi's loan because giving a clear explanation of how the loan worked would have**  
20 **punctured the illusion of a low-payment, low interest rate loan.**

21 Defendants and Loan Consultant also explicitly represented to Simonyi that she could  
22 afford her loan and further represented that she could shoulder the additional financial burden of  
23 repaying her loan in consideration of her other existing debts; yet failed to disclose that the fully  
24 amortized monthly payment on the loan was \$12,500.00. Given Simonyi's true monthly income  
25 of \$16,000.00, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income  
26 ratio, before any other debts are even considered, of over 78%- in excess of industry standard  
27 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
28 and Loan Consultant further represented to Simonyi that she could rely on the assessment that



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1 she was “qualified” to mean that she could afford the loan. Because of Simonyi’s lack of  
2 familiarity with how much debt a person can and should reasonably take on compared to her  
3 monthly income, and because Simonyi reasonably relied on Defendants’ and Loan Consultant’s  
4 expertise that any payment she was “qualified” for would take into account what the maximum  
5 debt a person such as Simonyi should be shouldering was, Simonyi reasonably believed  
6 Defendants’ and Loan Consultant’s representations that she could afford her loan and its  
7 payments.

8 Although Defendants and the Loan Consultant represented to Simonyi that she was  
9 “qualified” for her loan and could afford her loan and its monthly payments, Defendants and the  
10 Loan Consultant misled Simonyi into believing that her monthly payments would always only be  
11 \$4,687.50. Furthermore, at no point did Defendants or Loan Consultant clarify Simonyi’s false  
12 belief and advise her that \$4,687.50 would not be her permanent payment under the loan, or that  
13 every time she made a monthly payment in the amount of \$4,687.50, which is less than interest  
14 only, she would be deferring interest on her loan, increasing the principal balance of her loan.

15 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
16 on behalf of Defendants were accurate and made in good faith. On or around December 2006, an  
17 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
18 on Simonyi’s home, which was fraudulently inflated to an intentionally overstated value.  
19 Defendants and Loan Consultant represented that, per appraisal, Simonyi’s home was worth  
20 \$2,000,000.00 at the time she entered into her loan, and that such a valuation was a true and  
21 correct measure of her home’s worth. The current fair market value of Simonyi’s home is  
22 approximately \$1,242,642.00. Simonyi alleges that the appraisal was artificially inflated and that  
23 she has suffered damages in the amount of \$757,358.00 (\$2,000,000.00-\$1,242,642.00) due to a  
24 substantial loss of equity in her home as a result of Defendants’ fraudulent inflation and other  
25 acts described herein.

26 Defendants and Loan Consultant also represented to Simonyi that she would be able to  
27 refinance her loan at a later time. Simonyi relied on this assurance in deciding to enter into the  
28 mortgage contract Defendants and Loan Consultant also represented that it would modify

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1 Simonyi's loan, and Simonyi relied on this representation in deciding to enter into the loan.

2 However, Simonyi was unable to modify her loan.

3 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
4 reputable and complied with industry standard underwriting guidelines and were engaged in  
5 lending of the highest caliber;(2) property appraisals done by Defendants were accurate and  
6 made in good faith; (3) Simonyi could afford the loan ; (4) she was "qualified" for her loan; (5)  
7 "qualified" meant that she could afford her loan; (6) she would be able to modify her loan and  
8 (7) she would be able to refinance her loan.

9 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
10 otherwise improperly disclosed to Simonyi that: (1) Defendants and Loan Consultant knew that  
11 she could not and would not be able to afford her loan and that there was a very high probability  
12 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
13 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
14 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
15 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
16 to communicate that she could actually "afford" the loan which she was being given; (5)  
17 Defendants had abandoned its conventional lending business, prudent lending standards, and  
18 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
19 Simonyi's home to require her to borrow more money with the knowledge that the true value of  
20 Simonyi's home was insufficient to justify the amount of Simonyi's loan; or (7) Defendants  
21 knew that due to its scheme of fraudulently manipulating and inflating property values  
22 throughout the State of California that the real estate market would crash and Simonyi would  
23 lose substantial equity in her home.

24 Based on these misrepresentations and omissions, the material facts concerning  
25 Simonyi's loan were concealed from her, and she decided to move forward with her loan. On  
26 January 5, 2007, Simonyi signed the loan and Deed of Trust, before a notary. Had she known the  
27 truth however, Simonyi would not have accepted the loan. As a result of Defendants' fraudulent  
28 acts described throughout this complaint, Simonyi has lost substantial equity in her home, has

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1 damaged or destroyed credit, and at the time Simonyi entered into the loan her home was worth  
2 \$2,000,000.00, now her home is worth approximately \$1,242,624.00. Simonyi did not discover  
3 any of these misrepresentations or omissions until after a consultation with legal counsel at  
4 Brookstone Law, and through a complete and thorough investigation of the loan documentation,  
5 and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described  
6 throughout this complaint, were brought to light on or around November 11, 2011.

7 18. Plaintiff Rick Ewald ("Ewald") discussed refinancing an existing mortgage on his  
8 property located at 108 Grove Street, Nevada City, CA 95959 and A.P.N.: 05-395-02-000 with a  
9 loan consultant (the "Loan Consultant"), a representative and authorized agent of Green Point  
10 Mortgage, a correspondent of GMAC and Defendants herein (the "Defendants"), and authorized  
11 by Defendants to lend on its behalf, in or around February 2006. In the course of their  
12 discussions ranging from January 2006 until March 2006, Defendants and Loan Consultant  
13 steered him into a negatively amortized PayOption ARM in the amount of \$626,400.00 with an  
14 interest rate at 7.875% for a term of 30 years. Little did Ewald know, however, the disclosed  
15 interest rate was never "fixed" but applied to only his first monthly payment and could adjust  
16 every month thereafter. The maximum interest rate is 12.000%. The amount of Ewald's  
17 minimum monthly payment was "fixed" for 60 months and could adjust every 12 months  
18 thereafter. When the amount of the minimum monthly payment is insufficient to cover the  
19 amount of interest due, then the amount of that deficiency is added onto the unpaid principal  
20 balance of his loan. The recast point of this loan is 115% of the original loan amount. This loan  
21 was originated by GMAC, on the note and deed of trust Green Point Mortgage is identified as the  
22 lender, and the loan is being serviced by GMAC.

23 The disclosures in Ewald's loan documents discussing negative amortization only frame  
24 negative amortization as a mere **possibility** rather than a **certainty** when making the minimum  
25 payment. However, the reality was that by making the minimum payment, negative amortization  
26 was a *certainty*. Indeed, the payment schedule set forth in the Truth in Lending Disclosure  
27 Statement ("TILDS"), which set forth what appeared to be the *required* payment schedule, fails  
28 to disclose that making payments pursuant to the TILDS payment schedule *will* result in negative

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1 amortization. Ewald was not provided, before entering into the loans, with any other payment  
2 schedule or with any informed option to make payments different than those listed in the TILDS  
3 payment schedule. Had Defendants disclosed that by making the payment pursuant to the TILDS  
4 Ewald would be deferring interest, or had Defendants disclosed the payment amounts sufficient  
5 to avoid negative amortization from occurring, Ewald would not have entered into the loan.

6 **Defendants intentionally omitted a clear disclosure of the nature of Ewald's loan because**  
7 **giving a clear explanation of how the loan worked would have punctured the illusion of a**  
8 **low-payment, low interest rate loan.**

9 Further, Defendants and Loan Consultant advised him that he was eligible for a Low Doc  
10 Loan. Unbeknownst to him at the time, Defendants and Loan Consultant used this low  
11 documentation requirement to fraudulently inflate his income by \$9,854.00, a factor of 54%; and  
12 in doing so, Defendants and Loan Consultant caused him to be placed into a loan whose  
13 payments he could not afford given his true, *un-inflated* monthly income. Defendants and Loan  
14 Consultant altered Ewald's loan application without his knowing consent or authorization as  
15 Loan Consultant completed Ewald's application without giving Ewald an opportunity to review  
16 the loan application.

17 Defendants and Loan Consultant represented to Ewald that his monthly payment would  
18 always be \$2,014.75. Although the amount of Ewald's initial, disclosed minimum monthly  
19 payment was \$2,014.75, Defendants and Loan Consultant failed to clarify their partially true  
20 representations and advise Ewald: (1) how the interest rate on his loan was calculated; (2) that  
21 the initial, disclosed minimum monthly payment of \$2,014.75 would not always be available; (3)  
22 that the initial, disclosed minimum monthly payment would not be the permanent payment under  
23 the loan despite Defendants' and Loan Consultant's affirmative representations to the contrary;  
24 (4) that by paying the initial, disclosed minimum monthly payment he would be definitively  
25 deferring interest on his loan, increasing the principal balance of his loan every time he made the  
26 minimum monthly payment; (5) that by paying the minimum monthly payment the principal  
27 balance of his loan was certain to increase; or (6) his loan would be recast within a few years and  
28 he would be forced to pay considerably higher payments.

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1 Defendants and Loan Consultant also explicitly represented to Ewald that he could afford  
2 his loan and further represented that he could shoulder the additional financial burden of  
3 repaying his loan in consideration of his other existing debts; yet failed to disclose that the fully  
4 amortized monthly payment on the loan was \$4,541.83. Given Ewald's true monthly income of  
5 \$5,416.00, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio,  
6 before any other debts are even considered, of over 84%- in excess of industry standard  
7 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
8 and Loan Consultant further represented to Ewald that he could rely on the assessment that he  
9 was "qualified" to mean that he could afford the loan. Because of Ewald's lack of familiarity  
10 with how much debt a person can and should reasonably take on compared to his monthly  
11 income, and because Ewald reasonably relied on Defendants' and Loan Consultant's expertise  
12 that any payment he was "qualified" for would take into account what the maximum debt a  
13 person such as Ewald should be shouldering was, Ewald reasonably believed Defendants' and  
14 Loan Consultant's representations that he could afford his loan and its payments. Although  
15 Defendants and the Loan Consultant represented to Ewald that he was "qualified" for his loan  
16 and could afford his loan and its monthly payments, Defendants and the Loan Consultant misled  
17 Ewald into believing that his monthly payments would always only be \$2,014.75. Furthermore,  
18 at no point did Defendants or Loan Consultant clarify Ewald's false belief and advise him that  
19 \$2,014.75 would not be his permanent payment under the loan, or that every time he made a  
20 monthly payment in the amount of \$2,014.75, which is less than interest only, he would be  
21 deferring interest on his loan, increasing the principal balance of his loan.

22 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
23 on behalf of Defendants were accurate and made in good faith. On or around February 2006, an  
24 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
25 on Ewald's home, which was fraudulently inflated to a grossly and intentionally overstated  
26 value. Defendants and Loan Consultant represented that, per appraisal, Ewald's home was worth  
27 \$755,000.00 at the time he entered into his loan, and that such a valuation was a true and correct  
28 measure of his home's worth. The current fair market value of Ewald's home is approximately

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1 \$303,798.00. Ewald alleges that the appraisal was artificially inflated, and that he has suffered  
2 damages in the amount of \$451,202.00 (\$755,000.00-\$303,798.00) due to a substantial loss of  
3 equity in his home as a result of Defendants' fraudulent inflation and other acts described herein.

4 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
5 reputable and complied with industry standard underwriting guidelines and were engaged in  
6 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
7 made in good faith; (3) Ewald could afford the loan ; (4) he was "qualified" for his loan; (5)  
8 "qualified" meant that he could afford his loan; (6) Defendants would modify his loan in the  
9 future; and (7) Defendants would refinance his loan in the future.

10 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
11 otherwise improperly disclosed to Ewald that: (1) Defendants and Loan Consultant knew that he  
12 could not and would not be able to afford his loan and that there was a very high probability that  
13 he would default and/or be foreclosed upon; (2) Defendants had an incentive to sell his loan, and  
14 did sell his loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
15 "qualification" process was for Defendants' own protection and not his; (4) that Defendants' and  
16 Loan Consultant's representations that he was "qualified" to pay his loan was not intended to  
17 communicate that he could actually "afford" the loan which he was being given; (5) Defendants  
18 had abandoned its conventional lending business, prudent lending standards, and industry  
19 standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value Ewald's  
20 home to require him to borrow more money with the knowledge that the true value of Ewald's  
21 home was insufficient to justify the amount of Ewald's loan; or (7) Defendants knew that due to  
22 its scheme of fraudulently manipulating and inflating property values throughout the State of  
23 California that the real estate market would crash and Ewald would lose substantial equity in his  
24 home.

25 Based on these misrepresentations and omissions, the material facts concerning Ewald's  
26 loan were concealed from him, and he decided to move forward with his loan. On March 31,  
27 2006, Ewald signed the loan and Deed of Trust, before a notary. Had he known the truth  
28 however, Ewald would not have accepted the loan. As a result of Defendants' fraudulent acts

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1 described throughout this complaint Ewald has lost substantial equity in his home, has damaged  
2 or destroyed credit, and at the time Ewald entered into the loan his home was worth \$755,000.00,  
3 now his home is worth approximately \$303,798.00. Ewald did not discover any of these  
4 misrepresentations or omissions until after a consultation with legal counsel at Brookstone Law,  
5 and through a complete and thorough investigation of the loan documentation, and a discussion  
6 of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this  
7 complaint, were brought to light on or around September 22, 2011. (True and correct copy of the  
8 aforementioned documents are attached hereto as *Exhibit 13*).

9 19. Plaintiff Regina Faison ("Faison") discussed refinancing an existing mortgage on  
10 her property located at 22791 Rumble Drive, Lake Forest, CA 92630 and A.P.N.: 614-082-40  
11 with a loan consultant (the "Loan Consultant"), a representative and authorized agent of  
12 Homecomings Financial, LLC, a correspondent of GMAC Mortgage and authorized by GMAC  
13 Mortgage and Defendants herein (the "Defendants") to lend on its behalf, in or around October  
14 2005. In the course of their discussions ranging from October 2005 until December 2005,  
15 Defendants and Loan Consultant steered her into an Interest-Only ARM in the amount of  
16 \$576,000 with an interest rate at 6.500% for a term of 30 years. Little did Faison know, however,  
17 payments made during the first ten years of her loan were Interest-Only. Faison was also not  
18 advised that her interest rate was "fixed" for ten years and could adjust every month. This loan  
19 was originated by GMAC and Defendants, on the note and deed of trust Homecomings  
20 Financial, LLC is identified as the lender, and GMAC is currently servicing the loan.

21 Defendants and Loan Consultant represented to Faison that her monthly payment would  
22 always be \$3,120.00. Although the amount of Faison's initial, disclosed monthly payment was  
23 \$3,120.00, Defendants and Loan Consultant failed to clarify their partially true representations  
24 and advise Faison that: (1) her monthly payment would not pay down any of their principal  
25 balance during the Interest-Only period, or (2) her monthly payment would drastically increase at  
26 the end of the Interest-Only period, or (3) the amount of her initial, disclosed monthly payment  
27 would not remain "fixed" for the entire term of his loan.

28 Defendants and Loan Consultant also explicitly represented to Faison that she could

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1 afford her loan and further represented that she could shoulder the additional financial burden of  
2 repaying her loan in consideration of her other existing debts; yet failed to disclose that the fully  
3 amortized monthly payment on the loan was \$4,294.51. Given Faison's true monthly income of  
4 \$4,500, this represents a "front-end" debt-to-income ratio, meaning a debt-to-income ratio,  
5 before any other debts are even considered, of over 95%- in excess of industry standard  
6 underwriting guidelines, and in excess of Defendants' own underwriting guidelines. Defendants  
7 and Loan Consultant further represented to Faison that she could rely on the assessment that she  
8 was "qualified" to mean that she could afford the loan. Because of Faison's lack of familiarity  
9 with how much debt a person can and should reasonably take on compared to her monthly  
10 income, and because Faison reasonably relied on Defendants' and Loan Consultant's expertise  
11 that any payment she was "qualified" for would take into account what the maximum debt a  
12 person such as Faison should be shouldering was, Faison reasonably believed Defendants' and  
13 Loan Consultant's representations that she could afford her loan and its payments. Although  
14 Defendants and Loan Consultant represented to Faison that she was "qualified" for her loan and  
15 could afford her loan and its monthly payments, Defendants and Loan Consultant misled Faison  
16 into believing that her monthly payments would always only be \$3,120.00. Furthermore, at no  
17 point did Defendants or Loan Consultant clarify Faison's false belief and advise her that  
18 \$3,120.00 would not be her permanent payment under the loan, or that every time she made a  
19 monthly payment in the amount of \$3,120.00, she was not paying down any of her principal  
20 balance.

21 In addition, Defendants and Loan Consultant represented that appraisals conducted by or  
22 on behalf of Defendants were accurate and made in good faith. On or around November 2005, an  
23 appraisal company under the direct control and supervision of Defendants conducted an appraisal  
24 on Faison's home, which was fraudulently inflated to a grossly and intentionally overstated  
25 value. Defendants and Loan Consultant represented that, per appraisal, Faison's home was worth  
26 \$800,000.00 at the time she entered into her loan, and that such a valuation was a true and  
27 correct measure of her home's worth. The current fair market value of Faison's home is  
28 approximately \$510,000.00. Faison alleges that the appraisal was artificially inflated, and that



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1 she has suffered damages in the amount of \$290,000.00 (\$800,000.00-\$510,000.00) due to a  
2 substantial loss of equity in her home as a result of Defendants' fraudulent inflation and other  
3 acts described herein.

4 Defendants and Loan Consultant also represented to Faison that she would be able to  
5 refinance her loan at a later time. Faison relied on this assurance in deciding to enter into the  
6 mortgage contract. However, Faison has not been able to refinance her loan. Defendants and  
7 Loan Consultant also represented that it would modify Faison's loan, and did so, yet with  
8 egregious terms. The terms of Faison's permanent modification require her to pay interest only  
9 payments for the next ten years, maturing on February 10, 2016, then principal and interest  
10 payments until the end of her loan term, being January 1, 2036. Defendant's loan modification  
11 only allows 20 years, (February 10, 2016 until January 1, 2036) for Faison to pay off the full  
12 principal balance of her loan. Should she fail to do so, a balloon payment of the remaining  
13 amount will be due. Faison alleges that these loan terms are not beneficial, effectively worsening  
14 her loan conditions, yet to no success has been able to obtain a more reasonable offer from  
15 Defendants, despite numerous attempts.

16 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
17 reputable and complied with industry standard underwriting guidelines and were engaged in  
18 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
19 made in good faith; (3) Faison could afford the loan ; (4) she was "qualified" for her loan; (5)  
20 "qualified" meant that she could afford her loan; (6) she would be able to modify her loan and  
21 (7) she would be able to refinance her loan.

22 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
23 otherwise improperly disclosed to Faison that: (1) Defendants and Loan Consultant knew that  
24 she could not and would not be able to afford her loan and that there was a very high probability  
25 that she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her  
26 loan, and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
27 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
28 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended

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1 to communicate that she could actually “afford” the loan which she was being given; (5)  
2 Defendants had abandoned its conventional lending business, prudent lending standards, and  
3 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
4 Faison’s home to require her to borrow more money with the knowledge that the true value of  
5 Faison’s home was insufficient to justify the amount of Faison’s loan; or (7) Defendants knew  
6 that due to its scheme of fraudulently manipulating and inflating property values throughout the  
7 State of California that the real estate market would crash and Faison would lose substantial  
8 equity in her home.

9 Based on these misrepresentations and omissions, the material facts concerning Faison’s  
10 loan were concealed from her, and she decided to move forward with her loan. On December 23,  
11 2005, Faison signed the loan and Deed of Trust, before a notary. Had she known the truth  
12 however, Faison would not have accepted the loan. As a result of Defendants’ fraudulent acts  
13 described throughout this complaint Faison has lost substantial equity in her home, has damaged  
14 or destroyed credit, and at the time Faison entered into the loan her home was worth \$800,000.00  
15 now her home is worth approximately \$510,000.00. Faison did not discover any of these  
16 misrepresentations or omissions until after a consultation with legal counsel at Brookstone Law,  
17 and through a complete and thorough investigation of the loan documentation, and a discussion  
18 of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this  
19 complaint, were brought to light on or around February 3, 2012. (True and correct copy of the  
20 aforementioned documents are attached hereto as *Exhibit 14*).

21 20. Plaintiff Alejandra Ibarra (“Ibarra”) discussed obtaining a mortgage to purchase  
22 her home located at 2740 Lincoln Drive, San Bernardino, CA 92405 and A.P.N.: 0148-112-21-  
23 0000 with a loan consultant (the “Loan Consultant”), a representative and authorized agent of  
24 GMAC Mortgage and Defendants herein (the “Defendants”), in or around March 2008. In the  
25 course of their discussions ranging from March 2008 until May 2008, Defendants and Loan  
26 Consultant advised her to enter into a fixed rate loan in the amount of \$156,750 with an interest  
27 rate of 6.25%, for a term of 30 years. The loan was originated by GMAC, on the note and deed  
28 of trust GMAC was identified as the lender, and the loan is being serviced by GMAC.

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1 Defendants and Loan Consultant explicitly represented to Ibarra that she could afford her  
2 loan; and further represented that she could shoulder the additional financial burden of repaying  
3 her loan in consideration of her other existing debts. Defendants and Loan Consultant also  
4 represented to her that she could afford a \$1,446.10 monthly payment, despite her \$2,480.00 true  
5 monthly income (a “front-end” debt-to-income ratio, meaning a debt-to-income ratio, before any  
6 other debts are even considered, of over 58%- in excess of industry standard underwriting  
7 guidelines, and in excess of Defendants’ own underwriting guidelines). Defendants and Loan  
8 Consultant further represented to Ibarra that she could rely on the assessment that she was  
9 “qualified” to mean that she could afford the loan. Because of Ibarra’s lack of familiarity with  
10 how much debt a person can and should reasonably take on compared to her monthly income,  
11 and because Ibarra reasonably relied on Defendants’ and Loan Consultant’s expertise that any  
12 payment she was “qualified” for would take into account what the maximum debt a person such  
13 as Ibarra should be shouldering was, Ibarra reasonably believed Defendants’ and Loan  
14 Consultant’s representations that she could afford her loan and its payments.

15 Defendants and Loan Consultant also represented to Ibarra that she would be able to  
16 refinance her loan at a later time. Ibarra relied on this assurance in deciding to enter into the  
17 mortgage contract. However, Ibarra was not been able to refinance her loan because her home  
18 did not contain enough equity. Defendants and Loan Consultant also represented that it would  
19 modify Ibarra’s loan, and Ibarra relied on this representation in deciding to enter into the loan.  
20 However, Ibarra was unable to modify her loan.

21 Furthermore, Defendants and Loan Consultant represented that: (1) Defendants were  
22 reputable and complied with industry standard underwriting guidelines and were engaged in  
23 lending of the highest caliber; (2) property appraisals done by Defendants were accurate and  
24 made in good faith; (3) Ibarra could afford the loan; (4) she was “qualified” for her loan; (5)  
25 “qualified” meant that she could afford her loan; (6) she would be able to modify her loan and  
26 (7) she would be able to refinance her loan.

27 Moreover, Defendants and Loan Consultant withheld or incompletely, inaccurately or  
28 otherwise improperly disclosed to Ibarra that: (1) Defendants and Loan Consultant knew that she

**APPENDIX A TO AMENDED COMPLAINT IN SUPPORT OF AMENDED PROOF OF CLAIM**

1 could not and would not be able to afford her loan and that there was a very high probability that  
2 she would default and/or be foreclosed upon; (2) Defendants had an incentive to sell her loan,  
3 and did sell her loan at fraudulently inflated prices; (3) Defendants' and Loan Consultant's  
4 "qualification" process was for Defendants' own protection and not hers; (4) that Defendants'  
5 and Loan Consultant's representations that she was "qualified" to pay her loan was not intended  
6 to communicate that she could actually "afford" the loan which she was being given; (5)  
7 Defendants had abandoned its conventional lending business, prudent lending standards, and  
8 industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value  
9 Ibarra's home to require her to borrow more money with the knowledge that the true value of  
10 Ibarra's home was insufficient to justify the amount of Ibarra's loan; or (7) Defendants knew that  
11 due to its scheme of fraudulently manipulating and inflating property values throughout the State  
12 of California that the real estate market would crash and Ibarra would lose substantial equity in  
13 her home.

14 Based on these misrepresentations, the material facts concerning Ibarra's loan were  
15 concealed from her, and she decided to move forward with her loan. On May 13, 2008, Ibarra  
16 signed the loan and Deed of Trust, before a notary. Had she known the truth however, Ibarra  
17 would not have accepted the loan. As a result of Defendants' fraudulent acts described  
18 throughout this complaint Ibarra has lost substantial equity in her home and has damaged or  
19 destroyed credit. Ibarra did not discover any of these misrepresentations until after a consultation  
20 with legal counsel at Brookstone Law, and through a complete and thorough investigation of the  
21 loan documentation, and a discussion of the surrounding facts, the fraudulent acts of the  
22 Defendants, as described throughout this complaint, were brought to light on or around  
23 December 10, 2011.

24 21. Plaintiffs Julio and Maria Elena Del Cid ("Mr. and Mrs. Del Cid") discussed  
25 refinancing an existing mortgage on their property located at 5424 Cimarron Street, Sherman  
26 Oaks, CA 91423 with a loan consultant (the "Loan Consultant"), a representative and authorized  
27 agent of GMAC Mortgage and Defendants herein (the "Defendants"), in or around April 2007.  
28 In the course of their discussions ranging from April 2007 until June 2007, Defendants and Loan